



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

March 26, 2024

Via email at [REDACTED]
Colby Woodson

RE: *Public Records Matter Involving the University of Nebraska*
Our File No. 20241047

Dear Mr. Woodson:

This letter is in response to your public records petition received by this office on March 11, 2024. You have asked us to review the denial of your November 27, 2023, public records request to the University of Nebraska (University). On March 13, the undersigned spoke to Jaclyn Klintoe, Associate General Counsel/Director of University Records, about your petition. At our request, Ms. Klintoe provided us information as to the University's handling of your public records request. We considered your petition and Ms. Klintoe's response in accordance with the provisions of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022). Our findings in this matter are set forth below.

RELEVANT FACTS

You are a student at the University. On November 27, 2023, you emailed a public records request to Ms. Klintoe seeking the following:

Emails sent from or received by the following email accounts in the form of a direct email, or a carbon copy (cc), or a blind carbon copy (bcc) that were not sent from nor received by the email account cwoodson@huskers.unl.edu in the form of a direct email, nor a carbon copy (cc), nor a blinded carbon copy (bcc) -and- only those sent or received emails that contain any of the word(s); "colby", or "Colby",

or “woodson”, or “Woodson”, or “cwoodson”, or “Cwoodson”, or “conduct”, or “Conduct”:

acochran@unl.edu
ynam2@unl.edu
ztang2@unl.edu
jlopez47@unl.edu
lbyers3@huskers.unl.edu
mbolander2@huskers.unl.edu
fjahahngeer2@huskers.unl.edu
emartin22@huskers.unl.edu
zmiller8@huskers.unl.edu
fdzawu2@huskers.unl.edu
jhoich2@huskers.unl.edu¹

Ms. Klintoe timely responded to your request on December 1, 2023, stating in part as follows:

I’ve reviewed the [request] below and it appears that you are requesting a search of the email accounts of other University students. The University will not produce those records under the public records laws because student information is exempt from disclosure under Neb. Rev. Stat. 84-712.05(1). If you are making a request related to a specific conduct matter or would otherwise like to discuss the process for obtaining your own student records under the Family Educational Rights and Privacy Act (FERPA),² please let me know and I can more efficiently route your request or provide a response.

On December 4, you sent a follow-up email to Ms. Klintoe seeking to clarify her response and requesting copies of the faculty emails. Ms. Klintoe informed you again that “the University is denying your request in full under the Nebraska Public Records Act,” and that you could challenge that decision pursuant to the enclosed statute [§ 84-712.03]. She advised that “the records contained in faculty emails might be considered a part of your personal education record,” and that “[y]ou ha[d] certain rights to inspect

¹ It is our understanding that University students’ email addresses include “huskers” in the domain name.

² FERPA is a federal law that protects the privacy of student education records by broadly prohibiting the unauthorized disclosure of personal identifiable information in a student’s education record. 20 U.S.C.A. § 1232g(b)(1). An educational institution may disclose education records containing personal identifiable information if the disclosure is to the student. 34 CFR § 99.31(12). “Education records” include “those records, files, documents, and other materials which—(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C.A. § 1232g(4)(A).

your own education records under FERPA.” She offered again to process a separate request for your education records under FERPA.

On December 5, you emailed Ms. Klintoe asserting that while access to student emails could be denied, you still had the right to receive faculty emails. You indicated your intention to file a lawsuit to obtain the records.³ On December 6, Ms. Klintoe clarified again that the University would not produce any records containing personal information of students, including you, under the NPRS. Ms. Klintoe stated that despite this exclusion, “you have rights under [FERPA] to inspect your education records.” She reiterated that there may be records in the faculty emails that would be considered part of your education record, and asked again if you would “like to proceed under FERPA to inspect those records?”

Later in the day, you formally requested records under FERPA. On January 22, 2024, the University provided you remote access to your own education records through the University’s online filing sharing platform.

In her response to this office, Ms. Klintoe represents that “[e]very requested record was within the exception contained in Neb. Rev. Stat. § 84-712.05(1), as each record was related to identifiable, current University of Nebraska students (including Woodson himself).”

DISCUSSION

Neb. Rev. Stat. § 84-712 (2014) sets out the basic rule for access to public records in Nebraska. That statute provides, in pertinent part:

Except as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(Emphasis added.) “Public records” are defined as follows:

³ Your petition included a copy of your petition for a writ of mandamus filed in the District Court of Lancaster County, Case No. CI23-4377, on December 29, 2023. Your petition was dismissed by the court on the same day for failing to comply with the requirements in Neb. Rev. Stat. § 25-2160.

Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (2014) (emphasis added). Thus, in those instances where records requested under the NPRS are exempt from disclosure by statute, there is no right of access. The burden of showing that a statutory exception applies to the disclosure of particular records rests upon the custodian of those records. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009); *State ex rel. Nebraska Health Care Ass'n v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

Neb. Rev. Stat. § 84-712.05 of the NPRS is comprised of twenty-five categories of records that may be kept confidential from the public at the discretion of the agency involved so long as those records have not been “publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties” In the present case, the University is relying on Neb. Rev. Stat. § 84-712.05(1) as its basis to withhold the emails responsive to your request. This category pertains to “[p]ersonal information in records regarding a student, prospective student, or former student of any educational institution or exempt school . . . when such records are maintained by and in the possession of a public entity, other than routine directory information specified” under FERPA and 34 C.F.R. Part 99.

“Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” *Aksamit Resource Management LLC v. Neb. Pub. Power. Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018). The plain and ordinary meaning of the exception allows public bodies, at their discretion, to withhold records that contain personal information about students, with the exception of routine directory information defined under FERPA. You requested emails sent or received by other University students and emails sent by or received from faculty members that reference you—a University student. Ms. Klintoe represents to this office that all emails responsive to your request contain personal information about other University students or personal information about you. Thus, it appears to us that the emails you seek fall squarely within the plain language of § 84-712.05(1). As such, we find the University’s denial of your request under this exception appropriate.

CONCLUSION

Since we have concluded that the University did not unlawfully deny you access to public records by withholding certain University faculty and student emails under § 84-712.05(1), no further action by this office is necessary and we are closing this file. If you disagree with our analysis, you have the option to pursue the other remedies available to you in § 84-712.03. However, we would encourage you to continue to take advantage of the rights provided to you under FERPA as the means to access records from the University.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Jaclyn Klintoe (via email only)

49-3513-30