



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

May 14, 2024

Melissa B. Jones
[REDACTED]

RE: *Public Record Matter Involving the Nebraska State Patrol*
Our File No. 20241083

Dear Ms. Jones:

This letter is in response to your petition dated April 25, 2024, and received by this office on April 29. You have requested our assistance in obtaining certain access log records from the Nebraska State Patrol (NSP). We forwarded your petition to agency counsel Mark Boyer upon receipt. At our request, Mr. Boyer provided us a response to your petition. We considered your petition and the NSP'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), amended 2024 Neb. Laws LB 43. Our findings are set out below.

RELEVANT FACTS

By letter dated February 22, 2024, addressed to the NSP's "Legal Division – Public Records Request," you requested the following:

A log of all individuals who have accessed my information/profile/records/history in the [NSP] computer system/software/database from December 2018-Present day. Present day means up to the day that this access log is generated and printed. This access log information should include:

- The full name of the individual who accessed the record
- The date and time the record was accessed
- The sections/components of the records that were accessed (i.e. DMV info, case files, criminal history, etc.)

Mr. Boyer denied your request by letter dated February 27, 2024, indicating that the “denial is pursuant to Neb. Rev. Stat. § 84-712.05 subsection (5) because the information is investigative in nature.”¹

You assert that the investigatory records exception does not apply to the requested log. You also assert that since you have a right to NCJIS access logs, you “have this right for a local (city, county) law enforcement database.” You note that you received requested logs as a result of an identical complaint you filed with our office against the Omaha Police Department (OPD). You request that we direct the NSP to comply with your request.

DISCUSSION

While the NPRS provide broad access to public records, those statutes are not absolute. They also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). The exception in § 84-712.05(5), relied on by the NSP, is one of twenty-six categories of public records that may be kept confidential from the public at the discretion of the agency involved. The exception pertains to

[r]ecords developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, complaints or inquiries from residents of this state or other interested persons, informant identification, or strategic or tactical information used in law enforcement training²

This office has previously considered whether NSP database access information (i.e., “who, when, how, and what information was ascertained, as to each individual inquirer”) could be withheld under § 84-712.05(5). In our disposition letter in File No. 20231174, we stated:

There is no question that the NSP is a law enforcement agency charged with duties of investigation. In this respect, Neb. Rev. Stat. § 81-2004 (2014) states that “[t]he Nebraska State Patrol, its subordinate officers such as lieutenant colonel, majors, captains, lieutenants, sergeants, corporals, patrolmen, and other employees shall be used primarily for the enforcement of the traffic and motor

¹ We note that this is the same response you received from the NSP relating to your September 16, 2022, request for access log information.

² There are two exceptions to the exception: (1) records relating to the presence of drugs or alcohol in any body fluid of any person; and (2) records relating to the cause of death arising out employment once an investigation is concluded when requested by a family member of the deceased.

vehicle laws of the State of Nebraska and the handling of traffic within the state.” In addition, Neb. Rev. Stat. § 81-2005 (2014) states in part that

the Superintendent of Law Enforcement and Public Safety and all officers of the Nebraska State Patrol, except all carrier enforcement officers assigned to the carrier enforcement division, shall have the power:

- (1) Of peace officers for the purpose of enforcing the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Nebraska Rules of the Road, and any other law regulating the registration or operation of vehicles or the use of the highways;
- (2) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Nebraska Rules of the Road, or any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law;
- (3) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of the state relating to misdemeanors or felonies, if and when designated or called upon to do so as provided by law[.]

Consequently, any search records developed by the NSP relating to its duty to enforce the state's traffic laws, misdemeanors and felonies, and investigate violations of those laws, may be properly withheld under § 84-712.05(5).

We find no basis to conclude otherwise with respect to your request for the same information.

To be clear, your ability to obtain the NCJIS access log is based on express language in rules and regulations of the Nebraska Commission on Law Enforcement and Criminal Justice. Specifically, Title 78, *Nebraska Administrative Code*, Chapter 10, § 008, provides:

008 Public Inquiry – Any individual may request information about searches conducted regarding his or her person. Such a request only applies to NCJIS person queries conducted within one year from the date of the request. This relates only to data made available within NCJIS and does not include any queries made at the federal level.

008.01 Individuals must provide the NCJIS Project Manager with a Certification of Identity Form. The individual requesting information may authorize another

individual to submit the request on his or her behalf.

008.02 It is the duty of the NCJIS Project Manager to request release of query results from any law enforcement agency prior to release to ensure the public inquiry individual is not currently being investigated. This request is to include the following information:

008.02A Date of query

008.02B Data set accessed

008.02C Authorized Agency and Authorized User querying the system.

As you can see, release of information is contingent on whether the subject is currently being investigated. We are unaware of any other statutory or regulatory provision that *requires* law enforcement agencies to produce its access records. OPD, like the NSP, had the ability to withhold its access records under the exception in § 84-712.05(5), but chose to make those records available to you. However, the fact that you received records from OPD's databases does not obviate NSP's ability to withhold its access records as discussed above.

CONCLUSION

Based on the foregoing, we conclude that the NSP may continue to withhold the requested database access log information under § 84-712.05(5). You continue to have the ability to request NCJIS access information or use the NSP's webpage at <https://statepatrol.nebraska.gov/services/criminal-history-record-requests-to-request-criminal-history-information>. Ultimately, since the NSP did not unlawfully deny you access to public records, no further action by this office is warranted. Accordingly, we are closing this file.

Melissa B. Jones
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If you disagree with the conclusion reached above, you are free to consider what other remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie Donley
Assistant Attorney General

c: Mark Boyer

49-3538-31