



STATE OF NEBRASKA  
**Office of the Attorney General**

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ASSISTANT ATTORNEY GENERAL

June 12, 2024

Rodney Mason, #60589  
[REDACTED]

RE: *Public Records Matter Involving the Lincoln Police Department*  
Our File No. 20241100

Dear Mr. Mason:

This letter is in response to your public record petition dated May 19, 2024, and received by our office on May 28, in which you requested our review of the denial by the Lincoln Police Department (LPD) of your May 2, 2024, record request. We considered your petition in accordance with 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 in this matter are set forth below.

**RELEVANT FACTS**

By letter dated May 2, 2024, you requested the following records from the LPD pertaining to *State v. Rodney Mason*, Case No. CR03-679:

1. A "specific listing of the Individual items in my file";
2. **ALL** supplemental reports from interviews with Prentice Mason, to also include **ANY/ALL AGREEMENTS MADE BY THE STATE AND MR. MASON;**
3. **ALL** supplemental reports from interviews with Nicole Wagy, to also include **ANY/ALL AGREEMENTS MADE BY THE STATE AND MS. WAGY;**
4. **ALL** supplemental reports from interviews with Lolester Mitchell, to also include **ANY/ALL AGREEMENTS MADE BY THE STATE AND MR. MITCHELL;**
5. **ALL** transcripts from motions file, hearings held, and trial[.]

(Emphasis in original.) Assistant City Attorney Lily Ealey timely responded to your request on May 13, 2024. She provided you copies of the dispatch record and public incident report, but withheld “[a]ll other LPD investigative reports . . . pursuant to Neb. Rev. Stat. § 84-712.05(5).

You assert in your petition that the requested records have been previously disclosed in open court, therefore they “do not meet the withholding requirement.” You also assert that § 84-712.05 has been red flagged “for severe negative treatment, and therefore has been repealed.”<sup>1</sup> You state that you believe the records will help show a violation of your rights and that you should be given the opportunity to pursue those claims.<sup>2</sup> You further state that the LPD’s denial equates to a violation of your “Due Process Rights” and that providing you the dispatch record and the public incident report, records you indicate were not requested, was “a ploy to save face and claim that items were sent.” Finally, you have requested our review of the denial “to determine whether or not suit should be brought” under § 84-712.03.

## DISCUSSION

Public records in Nebraska “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.” Neb. Rev. Stat. § 84-712.01(1) (2014). While access to public records is broad, it is not absolute. The NPRS allow access “[e]xcept as otherwise expressly provided by statute” (§ 84-712(1)) or “[e]xcept when any other statute expressly provides that particular information or records shall not be made public” (§ 84-712.01(1)). Consequently, you have no right to access public records in those instances where the Legislature has made the records expressly confidential or subject to withholding under § 84-712.05.

Section 84-712.05 currently contains twenty-six categories of records that may be withheld at the discretion of the records custodian 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 . . . .” LPD based its denial on the exception in § 84-712.05(5), which allows records custodians to withhold

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<sup>1</sup> We can confirm that Neb. Rev. Stat. § 84-712.05 has not been repealed and was likely flagged because it was amended during the 2024 legislative session. See 2024 Neb. Laws LBs 43, 1074, and 1204.

<sup>2</sup> For your information, “[t]he public records statutes apply ‘equally to all persons without regard to the purpose for which the information is sought.’ As a general rule, citizens are not required to explain why they seek public information.” *BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247. Accordingly, we do not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

[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 training . . .

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years.<sup>3</sup> We have consistently held that such withholding is permissible, relying in large part on the plain language of the exception, which expressly permits law enforcement agencies to withhold records developed or received by those agencies in the course of an investigation. LPD is a law enforcement agency charged with duties of investigation of persons, institutions, and businesses. The records at issue here were either developed or received by LPD in the course of its investigation into your criminal case. Consequently, we find that the records requested in item numbers 1-4 may be withheld under § 84-712.05(5).

With respect to item 5 (trial and hearing transcripts and “transcripts from motions file”), § 84-712(4) requires that requests for public records be submitted in writing to the *custodian* of the records being sought. LPD would not be the custodian of trial and hearing transcripts in *State v. Mason*. We would suggest that you contact the Lancaster County Clerk of the District Court regarding this item in your request.

### CONCLUSION

Based on the foregoing, we conclude that the requested records developed or received by LPD pertaining to *State v. Rodney Mason*, Case No. CR03-679, may be withheld under the exception to disclosure in § 84-712.05(5). Since you have not been unlawfully denied access to public records, no further action by this office is necessary and we are closing our file.

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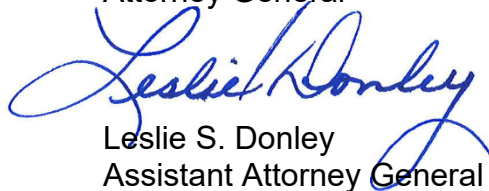
<sup>3</sup> See, e.g., *File No. 23-R-124; City of Fremont/Police Department; Jeff Forward, The Fremont Tribune, Petitioner* (July 10, 2023); *File No. 22-R-136; Douglas County Sheriff; Kathleen Foster, Petitioner* (July 29, 2022); *File No. 21-R-142; Hastings Police Department; Steve Stec, Petitioner* (December 17, 2021); *File No. 21-R-141; Omaha Police Department; Amanda Coleman, Petitioner* (November 3, 2021); *File No. 21-R-139; Nebraska State Patrol; Chris Dunker, Lincoln Journal Star, Petitioner* (October 20, 2021); *File No. 21-R-115; Omaha Police Department; Christopher Fielding, Petitioner* (June 10, 2021); *File No. 19-R-130; City of Omaha Police Department; David Earl, KETV NewsWatch 7, Petitioner* (December 20, 2019); *File No. 19-R-106; Omaha Police Department; Reginald L. Young, Petitioner* (January 31, 2019); and *File No. 18-R-106; Lincoln Police Department; Juanita Phillips, Petitioner* (March 22, 2018). You may access the disposition letters for these files at <https://ago.nebraska.gov/disposition-letters>.

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If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Lily Ealey

49-3559-31