



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

June 24, 2024

Jason D. Devers, [REDACTED]
[REDACTED]
[REDACTED]

RE: *Public Records Matter Involving the Omaha Police Department*
Our File No. 20241112

Dear Mr. Devers:

This letter is in response to your public record petition dated May 23, 2024, and received by our office on June 7, in which you requested our review of the denial by the Omaha Police Department (OPD) of your May 7, 2024, record request. Your petition included a copy of your public records request and the response you received from OPD Lieutenant Neal Bonacci. 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

Your request sought records pertaining to *State v. Jason Devers*, Case No. CR18-667 (Douglas County District Court), as follows:

1. A "specific list of the individual items in my file"
2. **ALL** supplemental police reports and the summary reports of **ALL** police interviews with **ALL** of the people that were in attendance
3. **ALL** documentation, including the motion to seal pertaining to Larry D. Goynes' case
4. **ALL** summary reports of the interviews of Pyia Milton, also to include **ALL** recordings of interviews with Ms. Milton and **ANY/ALL** payments, agreements, and/or compensation in which she received in exchange for her testimony

5. **ALL** summary reports of interviews with Marvin Stockdale, also to include **ANY/ALL** deals, agreements, and/or leniency he may have received in exchange for his testimony
6. **ALL** summary reports of interviews with Micheal Sullivan, also to include **ANY/ALL** deals, agreements, and/or leniency he may have received in exchange for his testimony
7. **ALL** internal affairs reports/complaints filed against **ALL** officers whom [sic] testified/worked this case, to include **EVERY** officer that handled evidence, the body of the Victim, and conducting of interviews
8. **ALL** background information (criminal) on **ALL** persons whom [sic] testified in the above captioned case

(Emphasis in original.) You indicated you were not requesting “the categorical list of all records maintained by this agency” but wished to obtain “the entire case file.”

Lt. Bonacci responded by letter dated May 20, 2024. He indicated that supplemental (summary) reports, interviews, and internal affairs records were “records developed by law enforcement agencies charged with duties of investigation” and were being withheld under Neb. Rev. Stat. § 84-712.05(5). With respect to records pertaining to any payments, agreements, or leniency extended to certain testifiers, Lt. Bonacci indicated that the OPD did not have access to who testified in your criminal case and referred you to the Douglas County Attorney’s Office. Lt. Bonacci provided you a link and other contact information to request a criminal history check. Copies of incident and booking reports relating to this matter were provided with his response.

You assert in your petition that OPD’s “failure to respond within the five day period allotted for any agency” should be construed as a denial of public records. You also assert “that there are some things that [have] been withheld that would prove [your] innocence” and your conviction is, at the very least, in violation of your Due Process rights.¹ You further assert that since all of the records requested have been disclosed in part in open court, they should not be withheld under § 84-712.05. Finally, you have requested that we file suit against OPD if our review of the denial warrants such action.

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-

¹ 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).

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.

OPD based its denial to produce “supplemental (summary) reports, interviews, and internal affairs records” on the exception in § 84-712.05(5), which allows records custodians to withhold

[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.² 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. OPD 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 OPD in the course of its investigation into your criminal case. You have produced no evidence to support your assertion that these records “have been in part disclosed in open Court” Consequently, we find OPD’s reliance on § 84-712.05(5) to withhold these items in your request appropriate.

With respect to deals, payments or agreements made with testifiers in exchange for leniency, Lt. Bonacci indicated that the OPD would not be the custodian of any such information, and referred you to the Douglas County Attorney’s Office. Pursuant to § 84-712, “[t]he public records statutes are directed to ‘the custodian’ of a requested public record . . . and the duties imposed thereunder on a specific custodian relate only to the public records of which that specific office or person is the custodian.” *Huff v. Brown*, 305 Neb. 648, 666, 941 N.W.2d 515, 527 (2020). According to the court, it is the requester’s

² 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; and Omaha Police Department; Christopher Fielding, Petitioner* (June 10, 2021). You may access the disposition letters for these files at <https://ago.nebraska.gov/disposition-letters>.

obligation to determine the proper custodian and direct the request to that person or office.
Id.

As to the timeliness of OPD's response, § 84-712(4) provides in part that

[u]pon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, *but not more than four business days after actual receipt of the request*, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

(Emphasis added.) As you can see, the custodian must respond no later than four business days following actual receipt of a written request. It is unclear from the petition when the OPD actually received your request. Lt. Bonacci indicated that his office received it "the week of May 13, 2024" A response placed in the U.S. Mail on May 20 would have been timely made if the request was received on May 14-17. In any event, we will remind Lt. Bonacci that § 84-712(4) requires a response no later than four business days following receipt of a request and would urge strict compliance to the statutory timeline in the future.

CONCLUSION

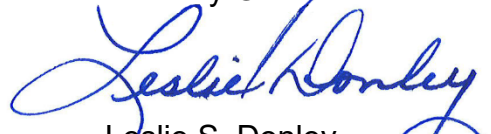
Based on the foregoing, we conclude that certain items in your request pertaining to *State v. Jason Devers*, Case No. CR18-667, may be withheld under the exception to disclosure in § 84-712.05(5). Other requested items are not records of or belonging to OPD and the OPD is not the legal custodian of those items. 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. If you disagree with the analysis we have set out above, you

Jason D. Devers
June 24, 2024
Page 5

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: Bernard in den Bosch

49-3565-31