



STATE OF NEBRASKA
Office of the Attorney General

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June 28, 2024

Via email to [REDACTED]
Eric Anderson

RE: *Public Records Matter Involving the Nebraska State Patrol*
Our File No. 20241118

Dear Mr. Anderson:

This letter is in response to your petition received by this office on June 13, 2024, in which you requested our assistance in obtaining a reconstruction report from the Nebraska State Patrol (NSP). On June 28, we discussed your petition with NSP attorney Michael Wehling. We considered your petition under 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. We have completed our review of your petition and our findings in this matter are set forth below.

RELEVANTS FACTS

On June 11, 2024, you requested “a copy of the Reconstruction report with photos attached” using the NSP’s public records portal. Mr. Wehling responded to your request on June 12, stating in part:

The Nebraska State Patrol is denying your request for the information regarding the matter referenced above. This denial is pursuant to Neb. Rev. Stat. § 84-712.05 subsection (5) because this information constitutes an investigative record.

You state in your petition that you would like a copy of the report which pertains to a June 7, 2023, fatal accident involving your father.¹ You indicate that the NDOT assisted you in getting a copy of the report filed by a state trooper, and advised you to request additional detailed information from the Troop E State Patrol Headquarters. However, your request for the report was denied. You are now appealing that decision and have requested that we advise you how to obtain a copy.

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 or 84-712.08. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. *BH Media Group*, 305 Neb. at 788, 943 N.W.2d at 240; *Aksamit Resource Mgmt. LLC v. Neb. Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

The NSP based its denial to produce the report on an exception in § 84-712.05, which allows the records custodian to withhold certain categories of records at its discretion unless publicly disclosed in an open court, administrative proceeding, or meeting or disclosed by a public entity pursuant to its duties. The specific exception in § 84-712.05(5) 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 training

¹ Please note that “[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.” *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020) [*BH Media Group*]. Accordingly, we do not consider the reason or purpose for a records request when determining whether a record may be withheld from disclosure.

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 taken the position 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. NSP is a law enforcement agency charged with duties of investigation of persons, institutions, and businesses. The reconstruction report was developed by NSP in the course of its investigation into the June 7, 2023, accident. There is no evidence to suggest the report has been disclosed to the public which would obviate NSP's ability to withhold it under § 84-712.05(5).³ Consequently, we find NSP's reliance on § 84-712.05(5) to withhold the reconstruction report to be appropriate.

CONCLUSION

For the reasons explained above, we conclude that the reconstruction report developed by the NSP relating to its investigation of the June 7, 2023, accident may be withheld under Neb. Rev. Stat. § 84-712.05(5). Since the NSP did not unlawfully deny your records request, no further action by this office is warranted. Accordingly, we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Michael Wehling (via email only)
49-3567-31

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>.

³ We understand there is a pending criminal matter relating to this accident. In the event the report is disclosed in open court, it will become available to you from either the NSP, by submitting another public records request, or the Clerk of the Scottsbluff County District Court.