



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

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**MIKE HILGERS**  
ATTORNEY GENERAL

**LESLIE S. DONLEY**  
ASSISTANT ATTORNEY GENERAL

July 9, 2024

Via email at [REDACTED]  
David Oupicky

RE: *Public Record Matter Involving the University of Nebraska*  
Our File No. 20241127

Dear Mr. Oupicky:

We are writing in response to your public records petition received by this office on June 24, 2024. You are appealing the denial of a public records request you submitted to Jaclyn Klintoe, Associate General Counsel for the University of Nebraska (University) on June 3, 2024. In accordance with our normal practice, we forwarded your petition to Ms. Klintoe and requested a response, which we received on July 2, 2024. We considered your petition and the University's response under 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.

### **FACTS**

According to your June 3, 2024, request, you sought certain records "related to Associate General Counsel Ms. Tara L. Scrogin" including

[a]ll emails sent or received by Scrogin and any memos, letters, meeting notes or minutes, reports, or other written communications by Scrogin containing the word "CPU", or "China Pharmaceutical University", "Chinese Pharmaceutical University", or "Oupicky" from January 1, 2018, until June 30, 2018.

Ms. Klintoe timely responded to your request on June 7. She informed you that the University could not search Ms. Scrogin's email account since "she [was] no longer

employed by the University and her email is not maintained and searchable . . . .” Ms. Klintoe indicated that a search for paper records was being conducted which would require an additional three business days to complete. Following an exchange of emails between you and Ms. Klintoe during June 7-11, Ms. Klintoe denied your request on June 12. She indicated that responsive records identified during the search of paper files would be withheld under the exception to disclosure in Neb. Rev. Stat. § 84-712.05(4) pertaining to attorney work product.

You are now challenging that decision. You generally assert the work product exception has been broadly applied to the responsive records, and ask us to consider that not all records of an attorney qualify as work product. You also assert that (1) the denial lacks specificity as to how the records constitute work product, (2) the University failed to release segregable non-work product information, and (3) the “strong public interest in government transparency and accountability” outweighs non-disclosure of the records. You have requested that we review the records and make a determination as to whether they do in fact constitute attorney work product and direct the University to release any records that may be non-exempt.

Ms. Klintoe informs us that Ms. Scrogin separated from employment with the University in 2019, and that her email account was deactivated upon separation. She indicates that the University no longer maintains or has access to Ms. Scrogin’s email. For the sake of completeness, in addition to the search of paper files, the University also reviewed its electronic document management system to determine whether any records were contained in the Office of General Counsel’s electronic filing system. As a result of that search, the University identified two responsive email messages which had been retained in a physical file in her office. Ms. Klintoe states that “[t]he emails were marked ‘attorney client privileged’ and contained legal advice from University attorneys or requests for legal advice from University officials.” Consequently, the University withheld the emails pursuant to Neb. Rev. Stat. § 84-712.05(4) and provided you a response that complied with the NPRS.

## **DISCUSSION**

Neb. Rev. Stat. § 84-712(1) grants Nebraska citizens and other interested persons access to public records “[e]xcept as otherwise expressly provided by statute . . . .” “Public records” are defined as “all records and documents, regardless of physical form, of or belonging to this state” and any other governmental entity “[e]xcept when any other statute expressly provides that particular information or records shall not be made public . . . .” Neb. Rev. Stat. § 84-712.01(1) (2014). Thus, every record of or belonging to a governmental body in Nebraska is a public record except when a statute provides otherwise. Public bodies, at their discretion, may withhold public records which fall within the categories listed in Neb. Rev. Stat. § 84-712.05 “unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties . . . .”

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The exception in § 84-712.05(4), used as the basis to deny you access to the two emails referenced above, applies to

[r]ecords which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503.

You have asked us to review the withheld records and make a determination as to whether they constitute attorney work product and the extent any non-exempt record or portions of records may be released. Please note that while a court may review records and documents *in camera* to determine whether they are excepted from disclosure, see § 84-712.03(2), there is no statutory mechanism for an *in camera* review by the Attorney General. Thus, we do not have access to the records you seek. Consequently, we will rely on representations from Ms. Klintoe that the records fall within the exception in § 84-712.05(4), and are in fact the work product of Ms. Scrogin.<sup>1</sup>


### CONCLUSION

Based on the foregoing, the two emails identified by the University as being responsive to your request may be withheld under the exception in § 84-712.05(4). Since we find no violation by the University relating to your records request, no further action by this office is necessary and we are closing this file.

If you disagree with the conclusion reached in this disposition letter, you are free to pursue the other legal remedies available to you under Neb. Rev. Stat. § 84-712.03 of the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Jaclyn Klintoe (via email)  
49-3578-31

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<sup>1</sup> In the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties and that absent evidence showing misconduct or disregard of law, the regularity of official acts is presumed. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (Neb. Ct. App. 2009).