



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

**RYAN D. BAKER**  
ASSISTANT ATTORNEY GENERAL

August 7, 2024

Michael McLemore [REDACTED]  
[REDACTED]  
[REDACTED]

RE: *Public Records Matter Involving the Omaha Police Department*  
Our File No. 20241145

Dear Mr. McLemore:

This letter is in response to your correspondence received by this office on July 25, 2024, in which you sought our assistance regarding a public records request submitted to the Omaha Police Department ("OPD") on or about June 18, 2024. We considered your petition in accordance with the Nebraska Public Records Statutes as set forth in Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022), amended 2024 Neb. Laws LB 43.

Per your petition to this office, you "requested the Omaha Police Department to produce a copy of ALL police reports to RB #P09702 and supplemental police reports drafted by officers Vacanttie #1423 and Collins #1245 regarding an interview with one Frieda J. Hyton."<sup>1</sup> In response to your request for those reports, OPD, through Lieutenant Neal Bonacci, provided "two pages of the initial investigation titled, Original Uniform Crime Report," and OPD declined to produce any other reports requested on the basis that such reports constituted investigative records as described in the investigative records exception found at § 84-712.05(5). Section 84-712.05 permits public bodies to withhold

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<sup>1</sup> We note that your petition sets out the reasons you are seeking these particular records and reports. 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 (2020).

certain public records “unless publicly disclosed in an open court, open administrative proceeding, or open meetings or disclosed by a public entity pursuant to its duties.” In pertinent part, § 84-712.05(5) provides that public bodies may 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 [or] investigation . . . .”

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>2</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 during an investigation. OPD is a law enforcement agency charged with duties of investigation of persons, institutions, and businesses. Your petition indicates that the requested records regarding interviews with Ms. Hyton were developed in connection with the investigation conducted prior to the prosecution of your criminal case. Any such record therefore falls under the investigatory records exception set forth in § 84-712.05(5).

While we note you assert that “[a]ll the requested reports dealing with RB #P09702 and the supplemental reports of Frieda Hyton drafted by Vacanttie and Collins were presented in open court” during your trial, you have provided no further evidence of such disclosure. Moreover, the Nebraska Public Records Statutes do not enable this office to conduct an independent review of records withheld by public bodies. The authority to conduct *in camera* reviews of withheld records is left to the district courts. In the absence of evidence that such records were disclosed in open court, we conclude that the investigatory records exception applies in this matter, and OPD is not required to produce the requested records.

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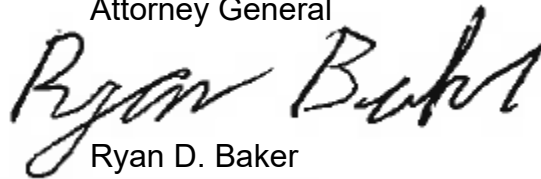
<sup>2</sup> See, e.g., *File No. 23-R-124; City of Fremont/Police Department; Jeff Forward, The Fremont Tribune, Petitioner* (July 10, 2023); *File No. 22-R-136; Douglas County Sheriff; Kathleen Foster, Petitioner* (July 29, 2022); *File No. 21-R-142; Hastings Police Department; Steve Stec, Petitioner* (December 17, 2021); *File No. 21-R-141; Omaha Police Department; Amanda Coleman, Petitioner* (November 3, 2021); and *File No. 21-R-139; Nebraska State Patrol; Chris Dunker, Lincoln Journal Star, Petitioner* (October 20, 2021).

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Your petition in this matter is therefore denied, and we will be closing this file. If you disagree with our findings in this letter, you may wish to consult with an attorney to consider the other remedies that may be available to you under the Nebraska Public Records Statutes.

Sincerely,

MIKE HILGERS  
Attorney General

A handwritten signature in black ink that reads "Ryan Baker". The signature is written in a cursive style with a large, prominent "R" and "B".

Ryan D. Baker  
Assistant Attorney General

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