



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 9, 2024

Via email: [REDACTED]
James Boucher

RE: *Public Records Matter Involving the City of Valley*
Our File No. 20241146

Dear Mr. Boucher:

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 City of Valley ("City") on July 11, 2024, and subsequent email correspondence with the City's Interim City Administrator, Dave Ptak. 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.

FACTS

Our understanding of the facts in this matter stems from your petition to this office and the materials attached thereto. We observe that this matter is related to our previous disposition of a similar records matter involving the City. See File No. 2024-1107, *City of Valley; James Boucher, Petitioner* (June 18, 2024). Per the email from Mr. Ptak dated July 17, 2024, you requested additional materials alongside the materials previously requested, including "[o]ne B&W Copy of Actual weekly Shift Duty assignment worked (time records) for VPD officers (name redacted if City desires) for five weeks beginning 6-3-24 and ending 7-7-24" and "one B&W copy of the List of [full-time] and [part-time] officers employed by the City as of this date." In his response on the City's behalf, Mr. Ptak denied "your request for weekly shift duty assignments," based on the belief "that disclosure of shift duty assignments is a security issue which exposes Valley to unique

vulnerabilities to public property, persons and criminal acts which the public disclosure would create a substantial likelihood of endangering public safety or property” in accord with the security exception found at § 84-712.05(9). Mr. Ptak further provided a list of full-time and part-time police officers employed by Valley as of July 11, 2024, and advised that Valley engages in “interlocal cooperation” with other law enforcement agencies. In a follow-up email to Mr. Ptak, you questioned whether the public safety risk concerns raised by the City are “equivalent to revealing security system information such as passwords and other very narrow and specific causes enumerated in Neb. Rev. Stat. 84-712.05 (9).”

DISCUSSION

The basic rule for access to public records in Nebraska is set out in § 84-712(1). This provision generally states that “[e]xcept as otherwise expressly provided by statute,” all Nebraska residents and other interested persons have the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. “Public records” are defined as

[a]ll 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. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1).

While the Nebraska Public Records Statutes provide general access to public documents, this access is not absolute. Section 84-712.05 sets forth categories of public records that may be withheld by public bodies 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” At issue in this matter is the exception found at § 84-712.05(9). This exception provides that the following records may be withheld:

Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law.

In our previous disposition letter referenced above, we declined to examine the City's reliance on § 84-712.05(9), as the issue then was whether the "request to have individual police officer names connected with their assigned duty shifts" fell under the umbrella of the personal information exception found at § 84-712.05(8). See File No. 2024-1107, *City of Valley; James Boucher, Petitioner* (June 18, 2024) at 3-4. You have requested the "Actual weekly Shift Duty assignment worked (time records) for VPD officers." We first note that Nebraska courts have yet to construe the scope of 84-712.05(9), and the contours of the exception are not entirely clear. However, we have closely examined this issue and believe the better answer is that the security exception in § 84-712.05(9) applies to the records requested. It seems to us the information and records you requested, if disclosed, would identify whether and how many law enforcement officers are on duty. The risks underlying disclosure of this information are analogous to those presented by the disclosure of "guard schedules" referenced in § 84-712.05(9). Specifically, disclosure would present risks to the public by identifying when and how many law enforcement officers are on duty, thus indicating when city residents and public properties may be vulnerable to criminal activity. Accordingly, we conclude that disclosure of the records requested would create a risk to public safety which the exception is designed to protect.

As a final note, we recognize, as we did in our prior disposition, that the City has provided you with records you have previously requested. However, the fact that the City produced those records is immaterial to the current matter, as the exceptions set forth in the Nebraska Public Records Statutes are discretionary on the public body. The prior production of requested records does not bind a public body to provide identical responses to subsequent requests for different information if such information was not "disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties." See § 84-712.05.

CONCLUSION

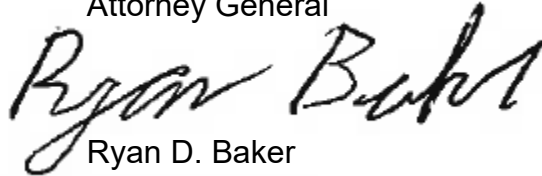
For the reasons set out above, we conclude that the City Office may withhold the information concerning the duty shift assignments of Valley police officers under the security exception found at § 84-712.05(9). The City Office did not unlawfully deny you access to public records, and no further action by this office is warranted. We will therefore close this records file.

James Boucher
August 9, 2024
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If you disagree with our legal analysis set forth herein, you may wish to consult with a private attorney to determine what, if any, additional records may be available to you under the Nebraska Public Records Statutes.

Sincerely,

MIKE HILGERS
Attorney General

A handwritten signature in black ink, appearing to read "Ryan Baker", written in a cursive style.

Ryan D. Baker
Assistant Attorney General

c: Dave Ptak

55-045