



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

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August 21, 2024

Via email at [REDACTED]  
Mike Kelly

RE: *Public Record Matter Involving Southern Valley School District*  
Our File No. 20241158

Dear Mr. Kelly:

This letter is in response to your correspondence received by this office on August 6, 2024. You have asked us to review the denial of your August 2, 2024, public records request by the superintendent of the Southern Valley School District (District), Bryce Jorgenson. We construed your correspondence to be a petition under § 84-712.03(1)(b) of the Nebraska Public Record 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 this matter and our findings are set forth below.

### **RELEVANT FACTS**

On August 2, 2024, you emailed a public records request to Mr. Jorgenson seeking documents relating to a District employee, including, but not limited to, the employee's "Disciplinary record . . . for entire term of . . . employment." Mr. Jorgenson timely responded to your request on August 5, 2024. He indicated that the records you seek, to the extent they existed, would be found in the employee's personnel file and that Neb. Rev. Stat. § 79-8,109 prohibits the school district from divulging this information. Mr. Jorgenson further indicated that the requested records would be excepted from disclosure under § 84-712.05(7),<sup>1</sup> which applies to "[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information."

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<sup>1</sup> This provision was recodified as subsection (8) with the enactment of 2022 Neb. Laws LB 1246, § 5.

Your petition discusses the reasons why you are seeking this individual's personnel records. You assert that the employee's "disciplinary record should be public record . . . ." You state that "I feel that the school has attempted to stonewall my communications and ignored my concerns and left me with no choice but to contact you." 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." *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).

## DISCUSSION

Neb. Rev. Stat. § 84-712 sets out the basic rule for access to public records in Nebraska. That statute provides, in pertinent part:

*Except as otherwise expressly provided by statute*, all residents of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(Emphasis added.) "Public records" in Nebraska "include all records and documents, regardless of physical form, of or belonging to" governmental entities in the state, "[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) (emphasis added). Thus, while access to public records is broad, it is not absolute. There is no right to access public records in those instances where the Legislature has made the records confidential or subject to withholding under Neb. Rev. Stat. § 84-712.05<sup>2</sup> or § 84-712.08. "A statute qualifies as an 'other statute' under § 84-712(1) when the plain language of a statute makes it clear that a record, or portions thereof, is exempt from disclosure in response to a public records request." *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 794, 943 N.W.2d 231, 243-44 (2020).

The District is relying on § 79-8,109 as its basis to withhold the requested records. This statute provides that

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<sup>2</sup> Section 84-712.05 currently contains twenty-six categories of records that may be withheld at the discretion of the records custodian "unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties . . . ."

[a]ny teacher, administrator, or full-time employee of any public school district shall, upon his or her request, have access to his or her personnel file maintained by the district and shall have the right to attach a written response to any item in such file. Such teacher, administrator, or employee may in writing authorize any other person to have access to such file, which authorization shall be honored by the district. Such access and right to attach a written response shall not be granted with respect to any letters of recommendation solicited by the employer which appear in the personnel file. *No other person except school officials while engaged in their professional duties shall be granted access to such file, and the contents thereof shall not be divulged in any manner to any unauthorized person.*

(Emphasis added.)

“Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. In construing a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.” *Aksamit Resource Management LLC v. Neb. Pub. Power. Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018). The plain and ordinary meaning of § 79-8,109 generally prohibits access to and disclosure of the contents of a public school district employee’s personnel file. There are three exceptions: (1) an employee may access their own file; (2) school officials engaged in professional duties may access personnel files; or (3) an employee may authorize in writing any other person to access their personnel file. Mr. Jorgenson informed you that the documents you requested would be contained in the employee’s personnel file, and that “[t]he school district is required by statute not to divulge this information under the provisions of Neb. Rev. Stat. § 79-8,109 . . . .” There is also nothing in your petition to suggest that the employee who is the subject of your public records request has authorized you to access the file. Consequently, since the requested records fall squarely within the parameters of § 79-8,109, and none of the exceptions allowing access applies, Mr. Jorgenson’s response to your public records request was appropriate.

Finally, because § 79-8,109 provides a basis to deny you access to the requested records, there is no need to consider whether § 84-712.05(8) would also allow the District to withhold the records.

## CONCLUSION


For the reasons stated above, we conclude the District’s reliance on § 79-8,109 to deny your request for records pertaining to a District employee was proper. Since we find no violation regarding the District’s handling of your records request, no further action by this office is necessary and we are closing our file.

Mike Kelly  
August 21, 2024  
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If you disagree with the analysis set out above, you 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: Bryce Jorgenson (via email only)

49-3613-31