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August 26, 2024

Tyler Manka



RE: *Public Records Matter Involving the Grand Island Police Department*
Our File No. 20241164

Dear Mr. Manka:

This letter is in response to your petition received by this office on August 9, 2024, in which you sought our assistance regarding a public records request dated July 25, 2024, and received by the Grand Island Police Department ("GIPD") on July 30, 2024, and your follow-up letter to the GIPD dated August 6, 2024. On August 21, 2024, the undersigned spoke to GIPD Captain Dean Elliott about your petition and, at our request, Captain Elliott provided us documentation pertaining to this matter. We considered your petition and the documentation we received from the GIPD in accordance with the Nebraska Public Records Statutes ("NPRS") as set forth in Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022), as amended by 2024 Neb. Laws LB 43. Our conclusions are set forth below.

In your request, you sought copies of the district court file for case number CR 14-357 in the Hall County District Court, including "police reports [and] discovery."¹ In its response dated July 31, 2024, and signed by Grand Island Police Chief Kevin Denney, the GIPD stated:

¹ We note that you made your request under the "Freedom of Information Act and Privacy Act" and made reference to compliance "under federal law" in your correspondence. For your information, the Freedom of Information Act or "FOIA," codified at 5 USC § 552, generally provides the right to request access to *federal* agency records or information. FOIA does not govern your right to access records of or belonging to Nebraska governmental entities, like the GIPD.

We do not have these records. The Case was investigated and handled by the Tri-Cities Drug Enforcement Task Force. Since we are not the custodian of the record you have requested, [w]e suggest you contact the local FBI office.

You subsequently sent another letter to GIPD claiming that its response was contradictory because the GIPD's response indicated that it had no responsive records but was "withholding the requested records." You requested that the GIPD provide you "with the Task Force's information and 'Local FBI' information," including contact names and addresses.

In its response dated August 14, 2024, the GIPD clarified that it was denying your request on the basis that it was not the custodian of the requested records. In pertinent part, the second response stated:

We have reviewed your request and are responding to inform you that the [GIPD] does not have possession of the case file that you are requesting. The [GIPD] Officers involved in this case were assigned to the Tri-Cities Drug Enforcement Task Force. The Tri-Cities Drug Enforcement Task Force is a joint task force that maintains their own case files and operated by the FBI. The Tri-Cities Drug Enforcement Task Force is the custodian of those records.

DISCUSSION

The basic rule for open public records in Nebraska is found at Neb. Rev. Stat. § 84-712. This 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.

"Public records" in Nebraska

[i]nclude 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.

Tyler Manka
August 26, 2024
Page 3

Neb. Rev. Stat. § 84-712.01(1) (emphasis added). In addition, Neb. Rev. Stat. § 84-712(4) requires requesters to submit written requests for public records to the *custodian* of the records sought.

In both of its responses, the GIPD stated that it was not the custodian of case files or reports related to case number CR 14-357. Captain Elliott confirmed to the undersigned that the department was neither involved in the investigation for that case nor in the possession of any reports or documents produced in connection with the investigation. Our review does not indicate that the GIPD has acted in bad faith in this matter.²

CONCLUSION

Based on the foregoing, we conclude that GIPD is not the custodian of the requested records, as they are not public records “of or belonging to” the GIPD. 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 other remedies that may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General

Ryan D. Baker
Assistant Attorney General

² Under Nebraska law, it is generally presumed that public bodies and officers carry out their duties in good faith. See *Wolf v. Grubbs*, 17 Neb. App. 292, 310, 759 N.W.2d 499, 518 (2009) (observing that, in a case involving the Open Meetings Act, “[i]n the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties”).