



STATE OF NEBRASKA  
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September 24, 2024

Via email at: [REDACTED]  
Leroy Koenig

RE: *Public Record Matter Involving the Nebraska Department of Correctional Services*  
Our File No. 20241175

Dear Mr. Koenig:

This letter is in response to your public records petition emailed to this office on September 9, 2024. You have asked us to review the denial of your August 29, 2024, public records request by the Nebraska Department of Correctional Services (NDCS). We have fully considered your petition and its attachments in accordance with the provisions of 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 and LB 1204. We have completed our review of the matter, and our findings are set forth below.

**RELEVANT FACTS**

You are a former employee of NDCS. On August 29, 2024, you submitted a public records request to NDCS seeking documents within your employee personnel file. Your request specifically sought your first performance evaluation, disciplinary records, reports written about you in the lead-up to your termination, and records concerning your termination and potential for rehire.

Public Records Manager Kathleen Kokensparger timely responded to your request on September 5, 2024. She indicated that the requested records were exempt from disclosure under Neb. Rev. Stat. § 84-712.05(8). Consequently, your request was denied under that statute.

You assert in your petition that documents in your personnel file will provide evidence of your wrongful termination. Further, you contend that damaging records in

your NDCS personnel file have been shared with other government agencies, hindering your job search. We note your concerns. 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). Accordingly, this office will 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(1) 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) (emphasis added). Thus, in those instances where records requested under the NPRS are exempt from disclosure by statute, there is no right of access. The burden of showing that a statutory exception applies to the disclosure of particular records rests upon the custodian of those records. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009); *State ex rel. Nebraska Health Care Ass’n v. Dept. of Health and Human Servs. Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

Neb. Rev. Stat. § 84-712.05 of the NPRS currently contains twenty-six categories of records that may be kept confidential from the public at the discretion of the agency involved 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 . . . .” In the present case, NDCS is relying on Neb. Rev. Stat. § 84-712.05(8)<sup>1</sup> as its basis to withhold responsive records about your employment and termination. This

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<sup>1</sup> This provision was previously codified as Neb. Rev. Stat. § 84-712.05(7). It was recodified as subsection (8) with the enactment of 2022 Neb. Laws LB 1246, § 5.

category pertains to “[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information.”

“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.” *Aksamit Resource Management LLC v. Neb. Pub. Power. Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018). The Nebraska Supreme Court has broadly construed the plain language of § 84-712.05(8) to encompass not only records kept within an employee’s personnel file, but any records containing “personal information about personnel, defined as persons employed by an organization.” *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 850, 885 N.W.2d 44, 50 (2016). This office has recognized that employee evaluations from personnel files may be kept confidential under Neb. Rev. Stat. § 84-712.05(8). Op. Att’y Gen. No. 90015 (February 27, 1990).

The records withheld by NDCS fall squarely within the express language of § 84-712.05(8). Your request explicitly asks for records contained within your personnel file from your time as an NDCS employee. The performance evaluation, disciplinary, and termination documents you request contain personal information about you, a former employee, beyond salary and directory information. Accordingly, we find Ms. Kokensparger’s denial of your records request appropriate.

Our analysis of § 84-712.05(8) does not change because the requested records contain your personal information. This office has previously considered whether a state agency can rely on the exception in § 84-712.05(8) as a basis to withhold personal records requested by one of its employees.<sup>2</sup> We considered whether a department acted properly by denying an employee’s request for records containing information about her absence from work. We agreed with the department’s denial, recognizing that the same rationale applies to § 84-712.05(8) whether the request is made by the employee or a member of the public. When the records at issue involve personal, private information about a department employee, and do not contain salary information or routine directory information, they may be properly withheld under § 84-712.05(8).

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<sup>2</sup> [File No. 18-R-102](#); *Nebraska Department of Revenue; Grace Willnerd, Petitioner*, January 18, 2018.

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### CONCLUSION

For the reasons stated above, we conclude that the NDCS's reliance on § 84-712.05(8) to deny your request was proper. Therefore, no further action by this office is necessary and we are closing your file. If you disagree with our 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



Benedict Kinnison  
Assistant Attorney General

c: Kathleen Kokensparger (via email)

37-002