



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
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September 25, 2024

Via email at [REDACTED]
Karl Kaluza

RE: *Public Records Matter Involving the Lancaster County Sheriff*
Our File No. 20241176

Dear Mr. Kaluza:

This letter is in response to your petition received by this office on September 10, 2024, in which you requested our review of the denial by the Lancaster County Sheriff (LSO) of your September 6, 2024, public records request. We forwarded your petition to Deputy County Attorney Coehn Preble upon receipt and requested a response. We specifically asked Mr. Preble to provide a general description of the records withheld. We received Mr. Preble's response on September 19. We considered your petition and Mr. Preble's response 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. Our findings in this matter are set forth below.

RELEVANT FACTS

On September 6, 2024, you emailed the LSO requesting the following records:

- Training and Policy Manuals, as well as any Mutual Aid Agreements, outlining the guidelines, criteria, and standard operating procedures (SOPs) that deputies are required to follow. This includes training materials related to requesting assistance from another law enforcement agency in the form of a Mutual Aid Request, Interagency Assistance, or Assist Other Agency (AOA).

- All documentation, including digital, voice, and physical communication (e.g., emails and phone transcripts), related to the request for assistance made of the Seattle Police Department (SPD) on or about August 13, 2024, to conduct a “knock-and-talk” of Karl Kaluza (5451 Fauntleroy Way SW, Seattle, WA 98136), as described in the attached SPD Field Contact Report (2024-227864).

LSO Captain Michael D. Scriven timely responded to your request by letter dated September 9, 2024. He denied your request under the exception to disclosure in Neb. Rev. Stat. § 84-712.05(5), stating that the requested records “are related to strategic or tactical information used in law enforcement training and the records are involved in a law enforcement investigation.” Captain Scriven also referenced Nebraska Supreme Court case *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009), in support of the denial.

Mr. Preble informs us that the LSO does not have a Mutual Aid Agreement with any law enforcement agency in Seattle, Washington. The LSO does have, however, a standard operating procedure entitled “Jurisdiction and Mutual Aid,” which “aids deputies at the [LSO] in strategy and tactical information while conducting an investigation.” As to the second item in your request, Mr. Preble confirms that the LSO has an email responsive to this request. He asserts that the LSO denied your request “based on the plain language of § 84-712.05(5), which covers records developed or received by law enforcement agencies when the records constitute a part of the examination, investigation, or intelligence information.” Mr. Preble represents that the withheld email was developed by the LSO in the course of an investigation.

You are challenging the LSO’s denial of records. Your petition contains no information or argument as to why you believe the LSO’s denial was inappropriate. Please note that we did not consider the reason why you are seeking the records in making our determination.¹

DISCUSSION

In Nebraska, Neb. Rev. Stat. § 84-712 generally allows Nebraska residents and other interested persons the right to examine public records in the possession of public agencies during normal agency business hours and to obtain copies of records in certain circumstances. “Public records” are defined as “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.” Neb. Rev. Stat. § 84-

¹ In this respect, “[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).

712.01(1). Access to public records is not absolute, however. Section 84-712 “provide[s] that exceptions may be created by express and special provisions.” *Orr v. Knowles*, 215 Neb. 49, 55, 337 N.W.2d 699, 703 (1983).

Neb. Rev. Stat. § 84-712.05 contains twenty-six categories of public records that may be withheld at the discretion of the public body so long as those records have not been “disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties” The exception at issue here pertains to

records 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, investigation, intelligence information, complaints or inquiries from residents of this state or other interested persons, informant identification, or strategic or tactical information used in law enforcement training²

This office has previously considered whether certain operating policies of law enforcement agencies could be withheld under § 84-712.05(5).³ We concluded in each instance that the requested materials contained “strategic or tactical information” and were used to train law enforcement personnel. Based on representations from Mr. Preble, we believe that the LSO’s “Jurisdiction and Mutual Aid” policy meets both criteria and was properly withheld.

With respect to your request for documentation relating to LSO’s request for assistance, this office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years. We have consistently held that such withholding is permissible, relying in large part on the plain language of the exception,⁴ which expressly permits law enforcement agencies to withhold records developed or received by those agencies in the course of an investigation. We have no basis to conclude otherwise with respect to your particular

² There are two exceptions to the exception: (1) records relating to the presence of drugs or alcohol in any body fluid of an individual; and (2) records relating to the cause of death arising out employment once an investigation is concluded when requested by a family member of the deceased.

³ See, e.g., *File No. 23-R-123; City of Fremont/Police Department; Jeff Forward, The Fremont Tribune, Petitioner*, dated July 6, 2023 (records withheld included police department’s pursuit policy); *File No. 21-R-139; Nebraska State Patrol; Chris Dunker, Lincoln Journal Star, Petitioner*, dated October 20, 2021 (records withheld included policy used by evidence technicians employed by the Nebraska State Patrol); and *File No. 20-R-123, Nebraska State Patrol; Chris Dunker, Petitioner*, dated August 19, 2020, (records withheld included policy regarding the use of non-lethal and less-lethal weapons).

⁴ Statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *BH Media Group, Inc.*, 305 Neb. at 792-93, 943 N.W.2d at 243; *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

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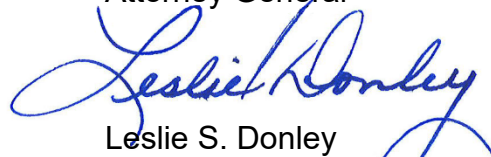
request. Mr. Preble has represented to this office that the email was part of an investigation. Consequently, the exception applies and the LSO may keep the email confidential.⁵

CONCLUSION

Since we have concluded that you were not improperly denied access to public records, no further action by this office is necessary and we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what, if any, additional remedies might be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Jennifer Chrystal-Clark (via email only)

49-3632-30

⁵ Our conclusion is further supported by language in Neb. Rev. Stat. § 29-3506 of the Security, Privacy, and Dissemination of Criminal History Information Act, Neb. Rev. Stat. §§ 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 (2016, Cum. Supp. 2022), which specifically exempts “intelligence or investigative information” from the definition of “criminal history record information,” information that must be disclosed under Neb. Rev. Stat. § 29-3520.