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Office of the Attorney General

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MIKE HILGERS
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October 15, 2024

[REDACTED]
Thylun Hill
[REDACTED]

RE: *Public Records Matter Involving the Omaha Police Department*
Our File No. 20241184

Dear Mr. Hill:

This letter is in response to your petition received by this office on September 30, 2024, relating to the denial by the Omaha Police Department (OPD) of your July 26, 2024, public record request, and your follow-up request made to the OPD on or about August 18, 2024.¹ Your petition included a copy of the OPD's denial letter in response to the original request. At our request, Deputy City Attorney Bernard J. in den Bosch provided us a copy of your original request, the August 18 letter, and the OPD's response to that letter dated September 3. We considered your petition and the documentation provided by Mr. in den Bosch 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 LBs 43 and 1204. Our findings in this matter are set forth below.

RELEVANT FACTS

Your July 26, 2024, public records request sought "a report for an incident that occurred [*sic*] in the county of Douglas, the night of 02/18/2012, surrounding the murder of Anthony Carter and the alleged suspect Thylun Hill CR-12-861 or CR 12-5176 or both."

¹ You indicate that you also sent a records request to "prosecutor Jim Masteller," who did not respond, and to defense attorney Cindy Tate, who had no responsive records. Please note that since you provided no documentation regarding these requests, we are unable to conduct a review. In addition, please note that Mr. Masteller is no longer employed with the Douglas County Attorney's Office and currently serves as a district court judge in Douglas County.

You also requested “any and all Notes, Statements, Supplementals, Interviews and or reports” pertaining to ten individuals, including what appear to be OPD officers.

OPD Lieutenant Neal Bonacci responded to your request by letter dated August 5, 2024, providing you “the available public reports related to your request.” However, the notes, statement, supplementals, and interviews were withheld under the exception in Neb. Rev. Stat. § 84-712.05(5) since the “records [were] developed by law enforcement agencies charged with duties of investigation.”

Your August 18 letter to Lt. Bonacci notes the OPD’s denial but asserts that the “records are public and they are for my legal use.”² You again requested “any and all notes, statements, supplementals, interviews & reports given on or after the date of 2/18/2012” pertaining to CR12-861. In response, Lt. Bonacci reiterated that the requested records were investigatory records subject to withholding under Neb. Rev. Stat. § 84-712.05(5) and in the absence of a subpoena, he was unable to provide them.

Your petition acknowledges OPD’s denial of your “Freedom of Information Act rights,”³ and notes the other requests you made for the information (see fn 1). You request that this office provide you “any and all statements, interviews, supplemental briefs, misconduct reports, sanctions, and criminal history” relating to eleven listed individuals. We note that the list differs from the list in your original request. You state that the records “are being requested to pursue my freedom.”

DISCUSSION

Section 84-712 of the NPRS 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. § 84-712.01(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).

² 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 (2020).

³ The Freedom of Information Act is a federal law, codified at 5 U.S.C. § 552, that generally grants access to records and information of federal agencies. This act does not provide a basis for you to obtain public records from Nebraska governmental entities, like OPD.

Neb. Rev. Stat. § 84-712.05, referenced in Lt. Bonacci's response, currently 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" OPD based its denial of your records request on the exception in § 84-712.05(5), which allows records custodians to withhold

[r]ecords 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 training⁴

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years.⁵ We have consistently held that such withholding is permissible, relying in large part on the plain language of the exception, which expressly permits law enforcement agencies to withhold records developed or received by those agencies in the course of an investigation. OPD is a law enforcement agency charged with duties of investigation of persons, institutions, and businesses. According to Lt. Bonacci, the records at issue here were developed by OPD in the course of its investigation into your criminal case. Consequently, we find that the records requested may be withheld under § 84-712.05(5).

Since we have concluded that you were not improperly denied access to public records and no violation of the NPRS occurred, no further action by this office is necessary and we are closing this file. If you disagree with our conclusion, you may wish

⁴ 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 from or related to employment once an investigation is concluded when requested by a family member of the deceased.

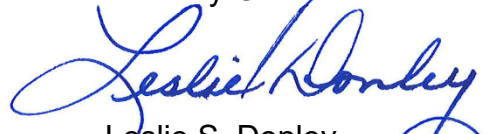
⁵ See, e.g., File No. 20241145, *Public Records Matter Involving the Omaha Police Department*, August 7, 2024; File No. 20241112, *Public Records Matter Involving the Omaha Police Department*, June 24, 2024; File No. 20241100, *Public Records Matter Involving the Lincoln Police Department*, June 12, 2024; File No. 20241067, *Public Records Matter Involving the Nebraska State Patrol*, April 19, 2024; File No. 23-R-124; *City of Fremont/Police Department; Jeff Forward, The Fremont Tribune, Petitioner* (July 10, 2023); File No. 22-R-136; *Douglas County Sheriff; Kathleen Foster, Petitioner* (July 29, 2022); File No. 21-R-142; *Hastings Police Department; Steve Stec, Petitioner* (December 17, 2021); File No. 21-R-141; *Omaha Police Department; Amanda Coleman, Petitioner* (November 3, 2021); File No. 21-R-139; *Nebraska State Patrol; Chris Dunker, Lincoln Journal Star, Petitioner* (October 20, 2021); and File No. 21-R-115; *Omaha Police Department; Christopher Fielding, Petitioner* (June 10, 2021). You may access the disposition letters for these files at <https://ago.nebraska.gov/disposition-letters>.

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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: Bernard J. in den Bosch

49-3646-31