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October 28, 2024

Via email to [REDACTED]
Christine Storm

RE: *Public Records Matter Involving the Nebraska State Patrol*
File No. 20241197

Dear Ms. Storm:

This letter is in response to the public records petition you filed with this office on October 11, 2024. You have requested our assistance in obtaining the motor vehicle pursuit policy from the Nebraska State Patrol (NSP). We considered your petition under the provisions of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 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 October 7, 2024, you submitted a request for the "state trooper motor vehicle Pursuit policies" using the NSP's public records system. NSP attorney Michael Wehling denied your request on October 8, stating the "denial is pursuant to Neb. Rev. Stat. § 84-712.05 subsection (5) because this information contains strategic or tactical information."

You state in your petition that "[p]olice department motorcycle pursuit policies are a public record" and that you "have been able to retrieve all surrounding police department policies, including Douglas County Sheriff, Omaha Police Department, Lavista [*sic*] Police Department and several others just by looking online." You further state that ". . . I have exhausted all my efforts to retrieve or view the [NSP] policies on motorcycle pursuits."

DISCUSSION

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. § 84-712.01(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 training¹

(Emphasis added.)

In our disposition in *File No. 23-R-123; City of Fremont/Police Department; Jeff Forward, The Fremont Tribune, Petitioner*, dated July 6, 2023, we considered the propriety of the city’s withholding its pursuit policy under § 84-712.05(5). Our analysis focused on the plain language in Neb. Rev. Stat. § 29-211 (2016), which requires law enforcement agencies in Nebraska to adopt and implement a written pursuit policy containing at least the following elements:

- (a) Standards which describe when a pursuit may be initiated, taking into consideration the nature and severity of the offense involved;
- (b) Standards which describe when a pursuit is to be discontinued, giving special attention to (i) the degree of danger presented to the general public and the

¹ 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.

pursuing officer and (ii) the probability of later apprehension of the subject based upon his or her identification;

(c) Procedures governing the operation of pursuits including, but not limited to, the number and types of vehicles which may be used, the method of operation of such vehicles, and the exercise of supervision during pursuits;

(d) Procedures governing pursuits which include other law enforcement agencies or which extend into the jurisdiction of other law enforcement agencies; and

(e) A system of mandatory continued planning and review of training of personnel appropriate and consistent with the policies and jurisdiction of the law enforcement agency regarding the proper handling of pursuits, including, at a minimum, an annual review of the policy with each sworn law enforcement officer and dispatcher.

We also noted that § 29-211(2) mandates that all law enforcement agencies in the state ensure that new hires to their agencies receive specialized training in pursuit driving as prescribed in the statute.

In concluding that the City of Fremont's reliance on § 84-712.05(5) to withhold its pursuit policy was appropriate, we stated:

In our view, not only does the statute contemplate a policy containing highly tactical and strategic information, but expressly requires that law enforcement personnel be trained on the policy. Thus, we find that a pursuit policy mandated under § 29-211 comprises "strategic or tactical information used in law enforcement training," and that the City cited a sufficient statutory basis to withhold it.

Disposition at 4. Consequently, we find the NSP's reliance on § 84-712.05(5) for the same reasons discussed above is appropriate.

The petitioner in *File No. 23-R-123* also asserted he should be able to access Fremont's pursuit policy because the Omaha Police Department's policy was available online and he had received a copy of the Saunders County Sheriff's Office policy through a public records request. In response to our inquiry about the posting, Deputy Omaha City Attorney Bernard in den Bosch refuted that the Omaha Police Department had posted the policy, questioned whether it was an older version, and "clarified that OPD has withheld copies of the policy pursuant to § 84-712.05(5)." *Id.* at 5. We also noted that the Lincoln Police Department's pursuit policy was unavailable on its website.² *Id.*

² See <https://www.lincoln.ne.gov/City/Departments/Police/About-LPD/Department-Policies>. The webpage states, in part: "While most are posted in their entirety, some policies contain strategic or tactical information used in law enforcement training, investigative instruction and sensitive material that could

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Finally, we pointed out that the exceptions listed in § 84-712.05 are *discretionary*, and that public bodies are not required to withhold records that fall within the exceptions. Like the City of Fremont, the NSP had the discretion to deny your request and elected to do so.

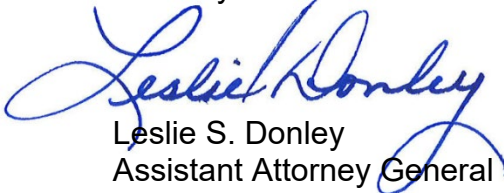
CONCLUSION

For the reasons explained above, we believe that the Nebraska State Patrol may lawfully withhold its pursuit policy under the exception in § 84-712.05(5). Since you have not been unlawfully denied access to public records, no further action by this office is necessary and we are closing our file.

If you disagree with the analysis we have set out above, you may wish to discuss with your private attorney what other remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Michael Wehling (via email only)

49-3663-31

jeopardize public safety or impede officers' ability to respond to critical incidents. Those policies remain confidential."