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Office of the Attorney General

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October 31, 2024

Via email at [REDACTED]
Douglas Kohler

RE: *Public Records Matter Involving the Lincoln County Sheriff's Office*
Our File No. 20241200

Dear Mr. Kohler:

This letter is in response to your public records petition received by our office on October 16, 2024, in which you requested our assistance regarding your October 2 public records request to the Lincoln County Sheriff's Office (LCSO). We faxed your petition to Lincoln County Sheriff Jerome Kramer on October 22, and discussed the matter with Deputy County Attorney Tyler J. Volkmer on October 23. At our request, Mr. Volkmer provided the undersigned a copy of his office's October 17 response to you and the attached report. We considered your petition in accordance with 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

You state that you hand delivered your request to the LCSO on October 2. Your request sought records pertaining to an investigation into your father's "death in the early morning hours of January 30, 2023 until the investigation was closed." The specific items requested included the following:

- Crime/Incident Log – to include nature of the call, location of the call, nature of police response
- Police/Sheriff report of the incident
- Any factual circumstances surrounding the incident

- Officer notes
- Crime-scene photographs to include photographs of the victim Robert Kohler
- Coroner report
- Any blood work that was ran on the victim Robert Kohler
- Case synapses [*sic*]
- Interview transcripts

You followed up with the LCSO on October 9, and were subsequently informed that your request had not been properly forwarded to the investigator in charge. You immediately took your request to the Lincoln County Attorney's Office and informed them that the LCSO "was not responding." As of the date of your petition (October 15), you had not received a response.

As noted above, Mr. Volkmer responded to your request by letter dated October 17. Mr. Volkmer provided you a copy of the "blood test results" but withheld the remaining items under the exception to disclosure in Neb. Rev. Stat. § 84-712.05(5) relating to investigatory records.

DISCUSSION

In Nebraska, "public records . . . include 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) (2014). However, while access to public records is broad, it is not absolute. The NPRS allow access "[e]xcept as otherwise expressly provided by statute" (§ 84-712(1)) or "[e]xcept when any other statute expressly provides that particular information or records shall not be made public" (§ 84-712.01(1)). Consequently, you have no right to access public records in those instances where the Legislature has made the records expressly confidential or subject to withholding under § 84-712.05.

Section 84-712.05 currently contains twenty-six categories of public records that may be withheld at the discretion of a public body 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" Mr. Volkmer referenced the exception in subsection (5) as the basis to withhold the majority of items in your request. This exception applies to

[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 training, except that this subdivision shall not apply to records so developed or received:

(a) Relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years.¹ We have consistently held that such withholding is permissible, relying in large part on the plain language of the exception,² which expressly permits law enforcement agencies to withhold records developed or received by those agencies in the course of an investigation. The LCSO is a law enforcement agency charged with duties of investigation of persons, institutions, and businesses. According to Mr. Volkmer, the records withheld were developed by the LCSO in the course of its investigation into your father's death. The blood test reports were provided to you since they fell within the exception to the exception listed in § 84-712.05(5)(a) above. Based on the foregoing, we find that the records were properly withheld under the exception cited.

However, we do have concerns about the timeliness of the response. Section 84-712(4) provides in part that

[u]pon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, *but not more than four business days after actual receipt of the request*, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business

¹ 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); and File No. 21-R-139; *Nebraska State Patrol; Chris Dunker, Lincoln Journal Star, Petitioner* (October 20, 2021). You may access the disposition letters for these files at <https://ago.nebraska.gov/disposition-letters>.

² “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. In construing a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.” *Aksamit Resource Management LLC v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

(Emphasis added.) The records custodian must respond no later than four business days following actual receipt of a written request. It appears from your petition that your request was not properly routed to the individual responsible for responding to public records requests resulting in an unnecessary delay. We will remind the LCSO staff, by providing a copy of this letter to Mr. Volkmer, that § 84-712(4) requires a response no later than four business days following receipt of a request. We would urge strict compliance with this statutory timeline in the future.

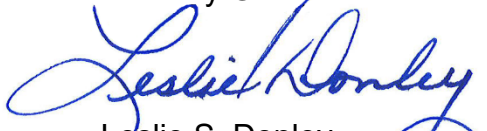
CONCLUSION

Under our enforcement authority set forth in Neb. Rev. Stat. § 84-712.03(1)(b), this office is required “to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections” We have reviewed the records matter and concluded that the LCSO may withhold its investigatory records concerning your father’s death except for the blood test results. This office does not supervise the LCSO and we have no authority in this context to comment on the sufficiency of the investigation conducted by the LCSO.

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 conclusion, 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: Tyler J. Volkmer (via email only)