



STATE OF NEBRASKA  
**Office of the Attorney General**

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**LESLIE S. DONLEY**  
ASSISTANT ATTORNEY GENERAL

November 1, 2024

Via email to [REDACTED]  
Drake Brown

RE: *Public Record Matter Involving the Omaha Police Department*  
Our File No. 20241201

Dear Mr. Brown:

This letter is in response to correspondence received by this office on October 11, 2024, and your supplemental documentation we received on October 17. You have requested our review of the denial by the Omaha Police Department (OPD) of your August 28, 2024, request for certain body camera footage. On October 29, we forwarded your petition to Deputy City Attorney Bernard J. in den Bosch and requested a copy of your public records request and the OPD's response. Mr. in den Bosch provided these materials, including an email exchange between you and OPD Lieutenant Neal Bonacci, later that day. We considered all documentation provided in this matter under 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 and conclusion are set forth below.

### **RELEVANTS FACTS**

On August 28, 2024, you requested the following records from the OPD:

[C]opies of the last 10 body camera recordings made by Officer Fickle of the Southeast Precinct, specifically non-investigative footage. This request is for routine interactions, such as traffic stops, community engagement, or other non-investigative activities.

Lt. Bonacci timely responded on September 4, 2024, stating in part as follows:

Your request for body camera footage is denied pursuant to Neb. Rev. Stat. 84-712 (5)<sup>1</sup> as records developed or received by law enforcement agencies charged with duties of investigation. Body worn camera footage is not released as it is all considered investigative in nature. You're welcome to subpoena the footage. However, it is not considered public record.

You are challenging OPD's denial. You assert "that not all body camera footage is inherently investigative in nature," and the investigation exemption should not apply to "routine interactions such as traffic stops and community engagement." You have requested our reconsideration since "this automatic classification of all footage as investigative appears overbroad." You state you are prepared to seek the remedies provided in Neb. Rev. Stat. § 84-712.03 if this matter remains unresolved.<sup>2</sup>

We note your petition included a list of "legal precedents from other states where courts have recognized the public's right to access non-investigative body camera footage." You did not provide any citations to the cases listed and we were unable to find most of them. We did, however, locate and review *State ex rel. Cincinnati Enquirer v. Deters*, 148 Ohio St. 3d 595, 71 N.E.3d 1076 (2016) ["*Deters*"]. You claim that this case contains a holding by the Ohio Supreme Court "that body camera footage from routine police actions, such as traffic stops, was not exempt from public records disclosure. Since this footage was created during regular police activities and not tied to an ongoing investigation, it was classified as a public record." *Deters* involved several media organizations' attempts to obtain body camera video of an officer-involved shooting after a traffic stop. The footage was eventually released by the prosecutor following grand jury proceedings and a few days after the mandamus action was filed rendering the case moot. At issue was the timeliness of the prosecutor's production. *Deters* contains no discussion about body camera footage from "routine police actions" being subject to disclosure and your representation in this respect is erroneous.

## DISCUSSION

The OPD is relying on § 84-712.05(5) as its basis to deny you access to body camera footage. This exception allows the following records to be withheld at the discretion of the public body unless publicly disclosed in an open court, administrative proceeding, or meeting or disclosed by a public entity pursuant to its duties:

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

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<sup>1</sup> We believe that Lt. Bonacci intended to cite to § 84-712.05(5).

<sup>2</sup> For your information, your petition to this office is the administrative remedy contemplated in Neb. Rev. Stat. § 84-712.03(1)(b).

interested persons, informant identification, or strategic or tactical information used in law enforcement training . . . .<sup>3</sup>

You have specifically requested “non-investigative” body camera footage, which, in your opinion, would effectively preclude its withholding under § 84-712.05(5). However, based on our review of OPD’s Body Worn Camera Policy,<sup>4</sup> non-investigative body camera footage does not exist. While the body cameras worn by OPD officers are always “on,” they are not activated until an officer is called into service, or is engaged in “non-dispatched law enforcement-related encounters and activities.” Policy at § VI.E.2, Body Worn Camera Operational Guidelines. As explained by Lt. Bonacci, “[e]ach video is subject to investigation, whether that is criminal or internal. Therefore, it is considered investigative. Traffic stops are investigative in nature as we need probable cause to initiate a traffic stop.” Moreover, with respect to your request for footage of “community engagements,” the policy states:

[Body Worn Camera] users are not expected to record casual interactions with the public, such as exchanging pleasantries, providing directions, or while attending community meetings. However, the BWC shall be activated any time an encounter becomes adversarial.

Policy at § VI.E.3. Consequently, it appears to us that to the extent you are seeking *non*-investigative footage, there is none to provide.

As to the general withholding of body camera footage, including footage involving traffic stops, this office has previously concluded that law enforcement agencies may withhold body camera footage based on the plain language of § 84-712.05(5).<sup>5</sup> This exception expressly allows law enforcement agencies to withhold records developed or received by the agencies which relate to investigations of persons, institutions or businesses.<sup>6</sup> There is no question that OPD is a law enforcement agency charged with duties of investigation, and that body camera footage is a record developed by its officers

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<sup>3</sup> 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.

<sup>4</sup> Accessible at <https://public.powerdms.com/OPDEP1/tree/documents/846107>.

<sup>5</sup> “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).

<sup>6</sup> See, e.g., File No. 20231130, *Public Record Matter Involving the Nebraska State Patrol* (September 12, 2023); and File No. 21-R-115; *Omaha Police Department; Christopher Fielding, Petitioner* (June 10, 2021).

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while engaged in calls of service, encounters or other law enforcement activities. Consequently, OPD may withhold any responsive footage under § 84-712.05(5).

### CONCLUSION

For the reasons explained above, we conclude that body camera footage that is responsive to your request, e.g., relating to traffic stops, may be lawfully withheld under Neb. Rev. Stat. § 84-712.05(5). Since the OPD did not unlawfully deny your records request, no further action by this office is warranted. Accordingly, 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 other remedies are available to you under the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Bernard in den Bosch (via email only)

49-3671-31