



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

November 19, 2024

Via email to [REDACTED]
Sarah Dixon

RE: *Public Records Matter Involving the Nebraska State Patrol*
File No. 20241217

Dear Ms. Dixon:

This letter is in response to your public records petition received by this office on October 28, 2024, in which you requested our assistance in obtaining the motor vehicle pursuit policies of the Nebraska State Patrol (NSP). At our request, on November 2 you supplemented your petition by providing us a copy of the NSP's denial. On November 10, you emailed us another petition in which you reiterated your request for the pursuit policies. You also requested records from this office relating to grand jury proceedings pertaining to Carsyn Storm, which concluded on November 7, 2024. We considered your petitions 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 8, 2024, you submitted a request to the NSP for the "State Trooper Motor Vehicle Pursuit Policies." Later that day NSP attorney Michael Wehling denied your request, 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 the policies "are a matter of public record." You assert that in no way does access to the policies "endanger[] strategic or tactical policies" and that such policies can be redacted if necessary.

DISCUSSION

On October 28, 2024, this office issued a disposition letter¹ which also dealt with access to the NSP's pursuit policies. We informed the petitioner that while Neb. Rev. Stat. § 84-712 generally gives Nebraska residents and other interested persons the right to examine or receive copies of public records, access is not absolute, and that "exceptions may be created by express and special provisions." *Orr v. Knowles*, 215 Neb. 49, 55, 337 N.W.2d 699, 703 (1983). The NSP withheld the policies under Neb. Rev. Stat. § 84-712.05(5), the same exception cited in its denial to you, which pertains in part 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. . . .

(Emphasis added.) We concluded that a pursuit policy mandated under Neb. Rev. Stat. § 29-211 is strategic or tactical information used in law enforcement training and could be withheld by the NSP under the exception. There is no basis to reconsider our decision, and we decline to do so.

You have also requested from this office "a copy of transcripts to include police reports and evidence presented for the Grand Jury hearing which concluded on November 7, 2024, case #MS 24-152 for Carsyn Storm." Please note that the Nebraska Department of Justice is not the custodian of grand jury records. Access to those records is governed by statutes pertaining to grand juries, not the NPRS. As to your specific request, it is our understanding that the grand jury convened to review this matter returned a "no true bill." In this event, Neb. Rev. Stat. § 29-1406(2)(g)(i) and (ii) (Cum. Supp. 2022) require the following:

- (i) The grand jury shall create a grand jury report with the assistance of the prosecuting attorney. The grand jury report shall briefly provide an explanation of the grand jury's findings and any recommendations the grand jury determines to be appropriate based upon the grand jury's investigation and deliberations; and
- (ii) The no true bill and the grand jury report shall be filed with the court, where they shall be available for public review, along with the grand jury transcript provided for in subsection (3) of section 29-1407.01.

¹ See [File No. 20241197](#), *Public Records Matter Involving the Nebraska State Patrol* (October 28, 2024).

(Emphasis added.) Neb. Rev. Stat. § 29-1407.01(3) (Cum. Supp. 2022) provides, in relevant part:

- (b) A transcript, including any exhibits of the grand jury proceedings, and a copy of such transcript and copies of such exhibits shall be prepared at court expense and shall be filed with the court. Such transcript shall not include the names of grand jurors or their deliberations.
- (c) If the grand jury returns a no true bill, a copy of the transcript, including a copy of any exhibits, shall be available for public review upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(Emphasis added.) Accordingly, we would encourage you to send a written request to the Clerk of the District Court in Douglas County to schedule a time to review the grand jury records outlined above.


CONCLUSION

Based on our analysis in File No. 20241197, the NSP 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 this office's handling of this matter, you may wish to discuss with your private attorney the 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)