



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
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November 21, 2024

Via email: [REDACTED]

Julianne Sanner
[REDACTED]

RE: *Public Records Matter Involving the Nebraska State Patrol*
Our File No. 20241218

Dear Ms. Sanner:

This letter is in response to your correspondence received by this office on November 6, 2024, in which you sought our assistance regarding your public records request submitted to the Nebraska State Patrol ("NSP") on October 22, 2024. We have considered your petition in accordance with the Nebraska Public Records Statutes ("NPRS") as set forth in Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022), amended by 2024 Neb. Laws LB 43 and LB 1204. Our conclusions are set forth below.

RELEVANT FACTS

This matter concerns your public records request submitted to NSP on October 22, 2024, in which you sought an "accident reconstruction report or partial reconstruction report" relating to a motor vehicle accident involving Lisa Wilson. In its response issued on October 23, 2024, NSP denied your records request at the direction of its attorney, Michael Wehling. In pertinent part, NSP's response stated:

The Nebraska State Patrol is denying your request for the accident reconstruction report regarding the matter referenced above. Please note a full reconstruction was not completed per the direction of the county attorney. This denial is for the

partial reconstruction materials we have. This denial is pursuant to Neb. Rev. Stat. § 84-712.05 subsection (5) because this information constitutes an investigative record.

In your petition to this office, you reiterate your request to obtain records regarding the partial accident reconstruction in the possession of NPS. You state that “[w]e are not looking to obtain confidential information and just want the facts of the case.” You further indicate that you are representing your insured driver.¹

DISCUSSION

Public records in Nebraska “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.” § 84-712.01. While the NPRS broadly authorize public access to public records, they are not absolute. Section 84-712.05 lists several categories of public records that may be withheld at the discretion of the custodian of such records. As pertinent to this matter, § 84-712.05(5) provides:

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

. . .

(5) 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 training, except that this subdivision shall not apply to records so developed and received:

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

(b) Relating to the cause of or circumstances surrounding the death of an employee arising from or related to his or her employment

¹ Please note “[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). Accordingly, this office does not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years.² 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 during an investigation.

There is no question that the NSP is a law enforcement agency charged with duties of investigation of persons, institutions, and businesses. As relevant to the present matter, Neb. Rev. Stat. § 81-2004 (2014), the NSP and its “subordinate officers . . . shall be used primarily for the enforcement of the traffic and motor vehicle laws of the State of Nebraska and the handling of traffic within the state.” Further, Neb. Rev. Stat. § 81-2005 (2014) states in part that

The Superintendent of Law Enforcement and Public Safety and all officers of the Nebraska State Patrol, except all carrier enforcement officers assigned to the carrier enforcement division, shall have the power:

- (1) Of peace officers for the purpose of enforcing the Motor Vehicle Operator’s License Act, the Motor Vehicle Registration Act, the Nebraska Rules of the Road, and any other law regulating the registration or operation of vehicles or the use of the highways;
- (2) To make arrests upon view and without warrant for any violation committed in their presence of the provisions of the Motor Vehicle Operator’s License Act, the Motor Vehicle Registration Act, the Nebraska Rules of the Road, or any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law; [or]
- (3) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of the state relating to misdemeanors or felonies, if and when designated or called upon to do so as provided by law.

Your petition and NSP’s response to your records request indicate that the requested partial accident reconstruction materials were developed in connection with NSP’s investigation into the motor vehicle accident involving Ms. Wilson. These materials fall

² See, e.g., *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).

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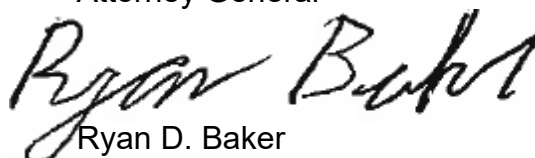
under the investigatory records exception set forth in § 84-712.05(5), as the NSP is charged with statutory duties of traffic investigations as set forth in §§ 81-2004 and 81-2005. Consequently, the NSP may withhold these materials at its discretion.³

CONCLUSION

Based on the foregoing, we conclude that NSP was permitted to withhold the requested accident reconstruction materials under § 84-712.05(5). No further action by this office is warranted in this matter, and we will accordingly close this file. If you disagree with our findings in this letter, you may wish to consult with an attorney to consider the other remedies that may be available to you under the Nebraska Public Records Statutes.

Sincerely,

MIKE HILGERS
Attorney General

A handwritten signature in black ink, appearing to read "Ryan Baker", written in a cursive style.

Ryan D. Baker
Assistant Attorney General

c: Michael Wehling (via email only)

³ We note you are “not looking to obtain confidential information.” Whether the materials in question were confidential is irrelevant to a public body’s invocation of the investigatory exception at § 84-712.05(5).