



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

RYAN D. BAKER
ASSISTANT ATTORNEY GENERAL

February 10, 2025

Via email: [REDACTED]

Jason Schwarting
[REDACTED]

RE: *Public Records Matter Involving Nebraska State Patrol*
Our File No. 20251009

Dear Mr. Schwarting:

This letter is in response to your petition received by this office on January 24, 2025, in which you sought our review of your public records requests submitted to the Nebraska State Patrol ("NSP") for certain law enforcement records. We 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 (2024), and our conclusions are below.

FACTS

Our understanding of the facts in this matter comes from your petition to this office and the accompanying materials. Per the NSP's response dated January 3, 2025, on December 31, you sought records regarding "radar make and model," "calibration reports time and date for the months of November and December," "calibration type, ie tuning forks," "officer start time on 11/22/24," and "officer 2024 salary."¹

¹ Your petition discusses your reasons for seeking the requested records. For your information, "[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." *See 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 determinations under § 84-712.03(1)(b).

NSP attorney Michael Wehling partially denied your records request. With respect to your requests for the officer start time and salary, NSP provided that information. For your request for information relating to NSP radar units, the NSP asserted that the records were investigatory and withheld them under § 84-712.05(5).

You subsequently requested dash camera and body camera video footage from the NSP. In an email dated January 6, 2025, NSP also denied this request, asserting that the videos were investigative records able to be withheld under § 84-712.05(5).

Following our receipt of your petition, the undersigned contacted the NSP and requested additional information regarding this matter. Our office received a response from NSP counsel, Mark Boyer, on January 30, 2025. Mr. Boyer stated that any dash camera or body camera footage “was generated as a result of the traffic stop and investigation into Mr. Schwarting violating the Nebraska Rules of the Road on November 22, 2024,” and therefore fell under the investigative records exception at § 84-712.05(5). Mr. Boyer further provided information regarding the make and model of the radar and indicated the NSP’s willingness to produce that information. Mr. Boyer further reported that the NSP “does not possess or have any records for the calibration reports of this particular radar unit for the months of November 2024 and December 2024.” In subsequent correspondence, Mr. Boyer indicated that the information regarding the make, model, and calibration type of the specific radar unit would be provided to you by the close of business on January 31, 2025.

DISCUSSION

The basic rule for access to public records in Nebraska is set out in § 84-712(1). This provision generally states that “[e]xcept as otherwise expressly provided by statute,” all Nebraska residents and other interested persons have the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. “Public records” are defined as

[a]ll 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. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (2024).

While the NPRS broadly authorizes 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 records custodian. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those

records. See *Evertson v. City of Kimball*, 278 Neb. 1, 7-8, 767 N.W.2d 751, 758-59 (2009). Consequently, it is the NSP's burden to show that the investigatory exception applies. Pertinently, § 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 or 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

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 Our conclusions in these dispositions have been based on both the plain text of the statute and the holdings of the Nebraska Supreme Court, which has stated:

A public record is an investigatory record if (1) the activity giving rise to the document sought is related to the duty of investigation or examination with which the public body is charged and (2) the relationship between the investigation or examination and that public body's duty to investigate or examine supports a colorable claim of rationality.

Jacob v. Nebraska Bd. of Parole, 313 Neb. 109, 125, 982 N.W.2d 815, 829 (2022).

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). Copies of our disposition letters relating to these files may be found at <https://ago.nebraska.gov/disposition-letters>.

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 (2024) provides that 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 (2024) states in part:

[T]he 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; [and]
- (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[.]

Turning first to your request for dash camera and body camera video recordings, these recordings were clearly developed in connection with the traffic stop referenced in your petition and the NSP’s duties to investigate potential violations of Nebraska’s traffic laws. Consequently, they constitute investigatory records under § 84-712.05(5), and the NSP’s denial of your request was permissible under the NPRS. With respect to your request for information regarding the “[r]adar make and model” and “calibration type,” we understand that the NSP provided this information to you on January 31. Finally, to the extent there may be a question regarding the existence of “calibration reports . . . for the months of November and December” for the particular radar unit, Mr. Boyer has confirmed to this office that no such reports exist. Given the absence of evidence to the contrary, we see no indication that the NSP has acted in bad faith in determining that the requested records do not exist.³

³ Under Nebraska law, it is generally presumed that public bodies and officers carry out their duties in good faith. See *Wolf v. Grubbs*, 17 Neb. App. 292, 310, 759 N.W.2d 499, 518 (2009) (observing that, in a case involving the Open Meetings Act, “[i]n the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties”).

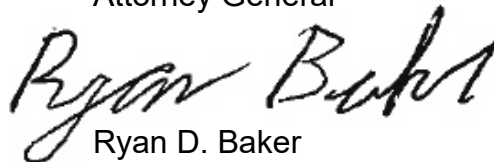
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CONCLUSION

For the reasons set forth above, we conclude that the NSP did not unlawfully deny you access to public records. Consequently, no further action is warranted by this office, and we will accordingly close this records file. If you disagree with our conclusions, you may wish to discuss this matter with an attorney to determine what, if any, additional remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Ryan D. Baker
Assistant Attorney General

c: Mark Boyer

55-071