



STATE OF NEBRASKA
Office of the Attorney General

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March 17, 2025

Via email to [REDACTED]
Sean Bradrick

RE: *Public Records Matter Involving the Omaha Police Department*
Our File No. 20251031

Dear Mr. Bradrick:

This letter is in response to your public records petition dated February 26, 2025, and received by this office on March 3. You have requested our review of the denial by the Omaha Police Department (OPD) of your September 8, 2024, request for a police report. On March 4, we forwarded your petition to Deputy City Attorney Bernard J. in den Bosch and requested a response, which we received on March 11. We considered the documentation submitted in this matter under the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024). Our findings and conclusion are set forth below.

RELEVANTS FACTS

By letter dated September 8, 2024, addressed to "The Omaha Police," you requested a copy of police report #AS32412. OPD Lt. Neal Bonacci responded to your request on September 28, 2024, stating in part as follows:

[T]his report is an investigative information report. As defined in Neb. Rev. Stat. 84-712.05(5), these reports are considered records developed by law enforcement agencies charged with duties of investigation, and as such are not considered public record. Therefore, your request is denied.

You are challenging OPD's denial of your request. You state the report is one you made to the OPD Behavioral Health & Wellness Unit on or about July 25, 2022. You also state that you "made multiple attempts" to obtain the report "without success." Your petition contains a lengthy narrative about an individual who appears to be the subject of the report, a timeline of events, correspondence to law enforcement from family members, and emails with OPD officers, among others.

In your request to OPD, you claim you are entitled to the report under the First Amendment, the Nebraska Public Records Law and the Freedom of Information Act. You assert that "[n]oncompliance or continuing to hide this report . . . will be seen as a violation of my civil and constitutional rights as an American Citizen." You further assert that by withholding the report, OPD is complicit in the individual's purported crimes and "is a form of discrimination."

Mr. in den Bosch informs us the report associated with #AS32412 is an "Information Report," which is deemed investigatory by the OPD. Mr. in den Bosch states that when an individual contacts the OPD to report a criminal incident, officers prepare an "incident report" pursuant to criteria in OPD's Report Writing policy.¹ However, the officer you contacted determined that what you reported did not meet the criteria to generate an incident report, which would be a record subject to disclosure under Neb. Rev. Stat. § 29-3521 (2016) and OPD policy. According to Mr. in den Bosch, the City of Omaha has a different policy to document citizens' interactions with OPD that do not meet the criteria for an incident report. In this respect, Section II.F of the OPD's Civilian/Officer Interactions policy² provides, in part:

Officers should document on a Field Contact/Observation Card (OPD Form 150) or the electronic equivalent and/or a Supplementary (OPD Form 200) or Information Report (OPD Form 42) when they interact with civilians for investigatory purposes even if it is later determined the civilian was not involved in the criminal activity being investigated.

Mr. in den Bosch confirms that the report generated in this instance was an Information Report, and that the OPD believed "the detailed information provided was investigative and a release to the public would potentially undermine current or future law enforcement investigations." Mr. in den Bosch further represents that OPD makes its determinations regarding the public dissemination of records based on the nature of the document and not on the individual requesting the records.

¹ See <https://public.powerdms.com/OPDEP1/tree/documents/843176>.

² See <https://public.powerdms.com/OPDEP1/tree/documents/799771>.

DISCUSSION

Neb. Rev. Stat. § 84-712 generally allows Nebraska residents and other interested persons the right to examine public records in the possession of public agencies during normal agency business hours and to obtain copies of records in certain circumstances. “Public records” are defined as “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). Access to public records is not absolute, however. Section 84-712 “provide[s] 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 OPD is relying on § 84-712.05(5) as its basis to deny you access to the Information Report. 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 interested persons, informant identification, or strategic or tactical information used in law enforcement training³

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years.⁴ We have consistently held that such withholding is permissible, relying in large part on the plain language of the exception,⁵ which expressly permits law enforcement agencies to withhold records developed or received by those agencies in the course of an investigation. OPD is a law enforcement agency charged with duties of investigation of

³ 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.

⁴ See, e.g., *File No. 20241184, Public Records Matter Involving the Omaha Police Department* (October 15, 2024); *File No. 20241118, Public Records Matter Involving the Nebraska State Patrol* (June 28, 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); and *File No. 21-R-142; Hastings Police Department; Steve Stec, Petitioner* (December 17, 2021). You may access the disposition letters for these files at <https://ago.nebraska.gov/disposition-letters>.

⁵ Statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

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persons, institutions, and businesses. The report at issue here was developed by OPD officers in accordance with its policy dealing with civilian/officer interactions. According to Mr. in den Bosch, the OPD considers this report to be investigatory in nature. Consequently, we find OPD's reliance on § 84-712.05(5) to withhold the requested report appropriate. We further find nothing discriminatory nor "complicit" in OPD's handling of your records request.

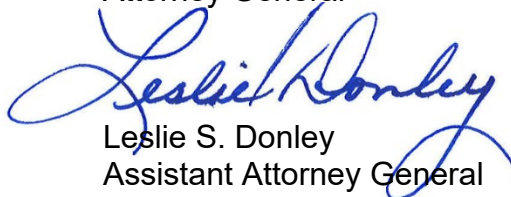
Lastly, we note that your petition requests that we provide you "a subpoena/court order for an unaltered/unredacted police report" Please note that this office's authority is limited to determining whether you have been denied access to public records or whether the public body involved has complied with the NPRS. See Neb. Rev. Stat. § 84-712.03(1)(b) (2024). We have no authority to issue subpoenas or court orders, the latter power being reserved solely to the courts.

CONCLUSION

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 analysis, you may wish to discuss this matter with your private attorney to determine the other remedies available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Bernard J. in den Bosch (via email only)

49-3759-31