



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

May 21, 2025

Via email: [REDACTED]
Kenneth Barrentine
[REDACTED]

RE: *Public Records Matter Involving Nebraska State Patrol*
Our File No. 20251063

Dear Mr. Barrentine:

This letter is in response to your petition received by this office on May 6, 2025, in which you sought our review of your public records request submitted to the Nebraska State Patrol ("NSP") on April 30, 2025, 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. Per your petition, you sought records from the NSP including "crime scene photographs," "autopsy reports and photographs," and "interrogation footage of Aubrey Trail and Bailey Boswell" in connection with "the 2017 murder of Sydney Looft."

In a response email dated April 30, 2025, the NSP denied your records request in full. Relying on § 84-712.05(5), the NSP's denial encompassed "all photos, interviews, reports, and evidence." The NSP further stated that "[u]nder a public records request, we will not be releasing the autopsy report(s) or body photos" and directed you to "contact the Coroner and/or County Attorney." The denial of your request came at the direction of NSP counsel Michael Wehling.

Following our receipt of your petition, the undersigned contacted the NSP and requested additional information regarding this matter. The undersigned spoke with NSP counsel Mark Boyer on May 13, 2025, and Mr. Boyer confirmed that the NSP was in possession of records responsive to your request. However, he maintained that the records requested fell within the investigative records exception under § 84-712.05(5) and that the NSP was not aware of whether such records were otherwise publicly disclosed.

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

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

§ 84-712.01(1). Based on our review of this matter, there can be no dispute that the requested records fall within the definition of “public records” under Nebraska law.

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 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). As applicable 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 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 if, after an investigation is concluded, a family member of the deceased employee makes a request for access to or copies of such records. . . .

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years.¹ 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) [*"Jacob"*].

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 members of the NSP may be designated to assist "in the enforcement of the laws of the states relating to felonies."

You cite multiple judicial opinions in support of your assertion that the requested public records must be disclosed. However, we note that several of these cases either do not apply in the context of the NPRS or do not exist. First, *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 96 S. Ct. 2791, 49 L. Ed. 2d 683 (1976), involved review of an order entered by a Nebraska trial court placing a prior restraint on news agencies' ability to publish or broadcast testimony and evidence adduced at a criminal trial. This case is irrelevant to the statutory rights granted by the NPRS, as it entirely concerned the constitutionality of the trial court's order under the First Amendment. Further, per our review of relevant court reporters, we could not locate a citation for either "*Nimmer v. City of Omaha*" or "*Haskell*

¹ 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>.

County Publishing Co. v. Haskell County.” We therefore do not factor these cases in our consideration of your petition.

We agree that the exceptions to disclosure under the NPRS must be narrowly construed in light of the Nebraska Legislature’s expressed strong public policy favoring disclosure. See *Evertson v. City of Kimball*, 278 Neb. at 13, 767 N.W.2d at 762. However, the plain language of § 84-712.05 does not place any further burden on public bodies beyond demonstrating that a statutory exception permits withholding the requested public records. See *State ex rel. BH Media Group v. Frakes*, 305 Neb. 780, 792-93, 943 N.W.2d 231, 243 (2020) (“Statutory language is to be given its plain and ordinary meaning, and . . . [i]t is not within the province of the courts to read a meaning into a statute that is not there”). The NPRS, and § 84-712.05(5) in particular, do not require public bodies charged with duties of investigation “to cite any specific harm or narrowly tailored exemption” when denying a request for records.

Rather, the NSP’s burden in this case is simply to show that “(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.” See *Jacob*, 313 Neb. at 125, 982 N.W.2d at 829. We conclude that the NSP has satisfied its burden under this test, as it is plain that all crime scene photographs, reports, and interrogation recordings were developed in connection with the NSP’s investigation into the murder of Sydney Loofe.

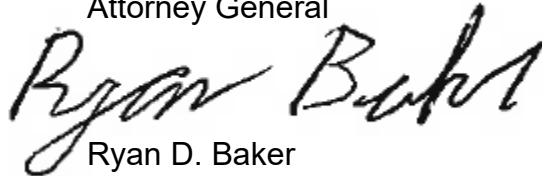
As a final matter, you assert in your petition that “[t]he statutory reference to investigative records in 84-712.05(5) does not apply in perpetuity to resolved matters.” However, there is no support for this proposition in either statute or case law. Section 84-712.05(5) does not contemplate whether an investigation is ongoing or has been resolved. That records in prior criminal trials were ultimately revealed to the public does not limit a public body’s discretion to decline disclosure of other records so long as the statutory elements have been met. As discussed above, the NSP has satisfied the requirements and properly exercised its discretion in declining to disclose the requested records.

CONCLUSION

For the reasons set forth above, we conclude that the NSP did not unlawfully deny you access to public records. No further action is therefore 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. You may also wish to request information from the Saline County District Court regarding the trials of Bailey Boswell (Case No. CR 18-41) and Aubrey Trail (Case No. CR 18-37).

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: Mark Boyer (via email only)

55-080-31