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**MIKE HILGERS**  
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July 3, 2025

Via email at [REDACTED]  
Ron Noble

[REDACTED]  
[REDACTED]

RE: *Public Record Matter Involving the Nebraska State College System*  
Our File No. 20251067

Dear Mr. Noble:

This letter is in response to your public records petition received by our office on June 12, 2025. You have asked us to review the denial of your public records requests by the Nebraska State College System (NSCS). This matter involves separate public record requests submitted to the three institutions within the NSCS. Since the requests are related, your petition and this letter address them together. Following our office's investigative procedures, the undersigned communicated with NSCS's General Counsel, Kristin Divel, concerning your requests and NSCS's initial response. We have fully considered your petition, its attached emails, and the information we received from Ms. Divel in accordance with the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024). Our findings concerning this matter are set forth below.

### **RELEVANT FACTS**

Your petition relates to similar public records requests submitted to Peru State College, Wayne State College, and Chadron State College over several weeks.

On May 7, 2025, you emailed a public records request to Dr. Chism at Peru State College (PSC). Your request indicated that you had previously sent a voluntary request for documents and were now making a formal public records request. Your request to PSC sought syllabi, as they were distributed to students and course sections taught during the 2024-2025 school year or later, for the courses EDUC 325, EDUC 334, EDUC

403, and all courses which participants in a Bachelor of Science in Elementary Education Endorsement are required to take and focus on reading instruction.

On May 18, 2025, you sent a nearly identical public records request to Wayne State College (WSC) focusing on syllabi from EDU 340, EDU 341, and EDU 430.

On June 12, 2025, you submitted another public records request to Chadron State College (CSC) focusing on syllabi from EDUC 417E, EDUC 423, and EDUC 424. At the same time, you resubmitted your requests to PSC and WSC, as neither institution had responded to your initial requests.

Regarding the May 7 request to PSC, Ms. Divel informed you that Dr. Chism was no longer employed at PSC and forwarded your request to the Registrar, Heather Rinne. Ms. Rinne informed you that syllabi are not subject to public record disclosure under Neb. Rev. Stat. § 84-712.05(3) as they are “proprietary or commercial information which, if released, would give advantage to business competitors and serve no public purpose.” Accordingly, PSC denied your request.

The same day, Director of College Relations for WSC, Jay Collier, and Associate Vice President of CSC, Malinda Linegar, sent similar denial letters, citing § 84-712.05(3) as the basis for withholding the requested records.

In your petition, you challenge NSCS’s reliance on § 84-712.05(3). You assert that your organization, the National Council on Teacher Quality (NCTQ), is not a business competitor of the colleges. NCTQ is a research and advocacy organization that analyzes teacher preparation programs nationwide to inform policymakers and the public about the alignment of each program with a set of standards. NCTQ requests information from hundreds of institutions, including thirteen in Nebraska, to prepare a report on teacher preparation. Furthermore, you argue that the information sought serves a public purpose, as the public has an interest in understanding whether colleges are preparing teachers in accordance with certain standards.

NSCS responded to our investigation first by clarifying the timing of the responses to your public record requests. CSC responded on June 12, 2025, the same day your request was submitted. Dr. Chism left PSU in June 2023. Therefore, no employee received your request until you resubmitted it on June 12, 2025. Finally, the registration office at WSC received your request on May 18, 2025. This request was not passed on to the appropriate contact person.

NSCS now contends it is not required to provide copies of the requested records because faculty-developed syllabi are protected by federal copyright law. Therefore, the NPRS prohibits it from distributing copies of syllabi in response to public record requests. NSCS also maintains that the requested records may be withheld under Neb. Rev. Stat. § 84-712.05(3) because they (1) contain proprietary information developed by faculty

based on years of instructional design, pedagogical methods, and the college's unique academic standards, (2) would, if released, allow other institutions of higher education to copy NSCS's resources, and (3) do not serve a compelling public purpose because NSCS's accreditation and standards are sufficiently transparent.

## **DISCUSSION**

### **I. Timely Response**

Neb. Rev. Stat. § 84-712(4) provides that when the custodian of a public record receives a written public record request, the custodian shall respond "not more than four business days after *actual receipt* of the request." (Emphasis added). There is no dispute that CSC timely responded to your request. Ms. Linegar replied on the same day the request was submitted. PSC also responded the same day your request was actually received. Your May 7, 2025, request was addressed to Dr. Chism, who has not worked at PSC for two years. When your request reached an active PSC employee on June 12, a response quickly followed. Your request to WSC on May 18, 2025, was actually received by the college's registration office that same day. According to NSCS, staff members did not connect your request to the proper employee, and no response was issued until you resubmitted your request on June 12, 2025. WSC's delayed response violated Neb. Rev. Stat. § 84-712(4) as it failed to respond to your request within four business days. The college apologizes for this oversight and is encouraged to examine its public record procedures.

### **II. Withholding Syllabi Under Neb. Rev. Stat. § 84-712.05(3)**

Under Neb. Rev. Stat. § 84-712(1) (2024), access to public records in Nebraska is guaranteed "[e]xcept as otherwise expressly provided by statute...." "Public records" in Nebraska "include all records and documents, regardless of physical form, of or belonging to" governmental entities in the state, "[e]xcept when any other statute expressly provides that particular information or records shall not be made public..." Neb. Rev. Stat. § 84-712.01(1) (2024). Thus, there is no absolute right to access public records in those instances where the Legislature has made the records confidential or subject to withholding under Neb. Rev. Stat. § 84-712.05. The burden of showing that a statutory exception applies to the disclosure of particular records rests upon the custodian of those records. *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 788, 943 N.W.2d 231, 240 (2020).

Neb. Rev. Stat. § 84-712.05 of the NPRS is comprised of twenty-nine categories of records that may be withheld from the public at the discretion of the agency involved so long as those records have not been "publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties...." In the present case, the NSCS relies on Neb. Rev. Stat. § 84-712.05(3) as a basis for withholding responsive documents. This category pertains to "proprietary or

commercial information which if released would give advantage to business competitors and serve no public purpose.”

We begin our analysis with a discussion of *Aksamit Resource Management LLC v. Neb. Pub. Power. Dist.*, as that case contains the Nebraska Supreme Court’s most current interpretation of § 84-712.05(3). In *Aksamit*, two limited liability companies that intended to produce and sell electricity in Nebraska requested that the Nebraska Public Power District (NPPD) produce documents detailing expenditures, revenues, and generation output costs. NPPD denied the request under § 84-712.05(3). On appeal, the Nebraska Supreme Court stated that for NPPD to withhold documents as proprietary or commercial information, it “had the burden to show *both* that the information would give advantage to competitors and that the information would serve no public purpose.” *Aksamit Res. Mgmt. LLC v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 124, 907 N.W.2d 301, 309 (2018) (emphasis added).

Under Neb. Rev. Stat. § 84-712.05(3), “[a] public purpose has for its objective the promotion of the public health, safety, morals, security, prosperity, contentment, and the general welfare of all the inhabitants.” *Aksamit*, 299 Neb. at 124, 907 N.W.2d at 309. When analyzing whether the release of records serves a public purpose, the “liberal public disclosure of the records of public entities is an important factor.” *Id.* If an articulated public purpose is “well within political and economic realms” and the subject of “intense political debate,” it is challenging for a government entity to establish that releasing such information serves no public purpose. *Id.* at 125, 907 N.W.2d at 309. Finally, the Nebraska Supreme Court explicitly held “that the language of § 84-712.05(3) does not allow us to balance the competing interests. Information which would give a business competitor an advantage may be withheld only if it would ‘serve no public purpose.’ There is no requirement that the public purpose to be served outweigh the competitive harm caused.” *Id.* at 125, 907 N.W.2d at 309-10.

In this case, NSCS has the burden to show that the release of the colleges’ syllabi would *both* give an advantage to business competitors and serve no public purpose. NSCS contends there is no direct or compelling public purpose that outweighs the institutional harm that would be caused by disclosure. It argues further that the public already has access to program descriptions, state approval reports, accreditation documents, and course catalogs to provide meaningful transparency regarding teacher preparation programs.

However, Nebraska law prevents government entities from balancing competitive interests. In your petition, you assert that the release of the requested syllabi would serve a public purpose by informing people on whether NSCS’s institutions are preparing aspiring teachers to teach reading using evidence-based practices. Transparent educational standards serve a public purpose and are the subject of policy debate. NSCS’s argument that the public purpose served is minimal fails to satisfy its burden of showing that the release of the requested records would serve “no public purpose.”

Consequently, NSCS may not withhold the requested records under Neb. Rev. Stat. § 84-712.05(3).

### III. Federal Copyright Law

NSCS further argued in its response to this office that federal copyright laws prohibit it from providing copies of syllabi. As an initial matter, a government entity may change its reasoning for withholding public records. See *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 847, 885 N.W.2d 44, 49 (2016) (finding no prejudice where the Nebraska State Patrol asserted another basis to withhold records once litigation began). We understand that in its response to you, NSCS only cited Neb. Rev. Stat. § 84-713.05(3) as its basis for withholding records. NSCS is not required to rely solely on Neb. Rev. Stat. § 84-712.05(3) when another statutory basis to withhold records applies.

Neb. Rev. Stat. § 84-712(1) provides:

Except as otherwise expressly provided by statute, all residents of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) *except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.*

(Emphasis added).

Federal copyright law provides that “the owner of copyright ... has the exclusive rights ... to reproduce the copyrighted work in copies.” 17 U.S.C.A. § 106. “Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” *Aksamit*, 299 Neb. at 123, 907 N.W.2d at 308.

Our research identified no Nebraska case discussing the copyright provision in Neb. Rev. Stat. § 84-712(1). However, in a previous disposition letter, this office determined that, under NPRS and 17 U.S.C.A. § 106, a government agency is prohibited from providing copies of materials covered by federal copyright law in response to a public records request.<sup>1</sup> The plain and ordinary language of Neb. Rev. Stat. § 84-712(1) states

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<sup>1</sup> See File No. 20-R-105; *Nebraska Public Power District; Daniel Tait, Petitioner* (March 10, 2020).

that interested persons may not obtain copies of records protected by federal copyright law.

We now examine whether the requested syllabi are protected by federal copyright law. Copyright protection extends to “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” 17 U.S.C.A. § 102. “To qualify for copyright protection, a work must be original to the author.” *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 111 S. Ct. 1282, 1287, 113 L. Ed. 2d 358 (1991). The term original “means only that the work was independently created by the author ... and that it possesses at least some minimal degree of creativity.” *Id.* “To be sure, the requisite level of creativity is extremely low; even a slight amount will suffice.” *Speedway Motors, Inc. v. Perlmutter*, 553 F. Supp. 3d 703, 708 (D. Neb. 2021). “The vast majority of works make the grade quite easily, as they possess some creative spark, no matter how crude, humble, or obvious it might be.” *Id.*

Cases from other jurisdictions involving your organization have determined that faculty-developed syllabi in the possession of state colleges are protected by federal copyright law. See *Nat’l Council for Tchrs. Quality, Inc. v. Curators of Univ. of Missouri*, 446 S.W.3d 723, 728 (Mo. Ct. App. 2014) (“[d]isclosing the syllabi to the NCTQ—through reproduction and distribution—would constitute a violation of the Federal Copyright Act.”); *Nat’l Council on Tchr. Quality v. Minnesota State Colleges & Universities*, 837 N.W.2d 314, 317 (Minn. Ct. App. 2013) (recognizing “the syllabi are the copyrighted intellectual property of [the college’s] faculty-authors under the Federal Copyright Act,” but finding NCTQ could obtain the syllabi as its proposed use of the syllabi for research purposes constituted a fair use).<sup>2</sup>

According to NSCS, the requested syllabi are faculty self-developed instructional materials used in the development of the course. They consist of traditional works of scholarship as instructional materials. Faculty have not received specific compensation in exchange for developing the syllabi and have not provided NSCS permission to reproduce them. Based on the standards for works to qualify for copyright protection, the relevant caselaw, and NSCS’s representations, we conclude that the requested syllabi are protected under federal copyright law and NSCS is prohibited from providing you copies under Neb. Rev. Stat. § 84-712(1). However, you retain the right under Neb. Rev.

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<sup>2</sup> Federal copyright law generally provides a fair use exception where it is not an infringement of the copyright to reproduce work for scholarship or research. 17 U.S.C.A. § 107. However, this exception is tied to how an individual uses copyrighted materials. The NPRS “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.” *Frakes*, 305 Neb. at 801, 943 N.W.2d at 247. Our office considers only whether the requested records are protected by federal copyright law. We do not consider a party’s affirmative defense to a copyright infringement claim. See also *Nat’l Council for Tchrs. Quality, Inc. v. Curators of Univ. of Missouri*, 446 S.W.3d at 730 (concluding fair use doctrine had “no applicability” to request for copyrighted records under Missouri’s “Sunshine Law.”).

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Stat. § 84-712(1)(a) to examine the requested records at each college's office in Nebraska during ordinary business hours.

### **CONCLUSION**

For the reasons stated above, we conclude that NSCS is prohibited from providing copies of the requested syllabi under federal copyright law as referenced in Neb. Rev. Stat. § 84-712(1). As such, it did not violate NPRS in denying your requests. 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 a private attorney to determine what additional remedies, if any, are available to you under these statutes.

Sincerely,

MIKE HILGERS  
Attorney General

A handwritten signature in blue ink, appearing to read "Ben Kinnison", with a stylized flourish at the end.

Ben Kinnison  
Assistant Attorney General

c: Kristin Divel (via email only)