



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

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

August 15, 2025

Via email at [REDACTED]
Kori Guerrero

RE: *Public Record Matter Involving the Garfield County Attorney*
Our File No. 20251085

Dear Ms. Guerrero:

This letter is in response to your public record petition received by this office on July 25, 2025. You have requested, among other things, our review of the handling of two public records requests emailed to the Garfield County Attorney, Curtis A. Sikyta. On August 11, 2025, we wrote to you indicating we had contacted Mr. Sikyta about your requests, and learned he emailed his response to the wrong email address. We informed you we were unable to provide a final determination in this matter until we received and reviewed Mr. Sikyta's response and anticipated providing our disposition in this matter no later than August 15. We have now concluded our review under the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024). Our findings in this matter are set out below.

RELEVANT FACTS

Your petition involves two requests emailed to Mr. Sikyta on July 16 and 18, 2025. Both requests sought records pertaining to your late cousin, Amanda Lynn Summers, including the autopsy report and associated records, e.g., toxicology and pathology reports, coroner's notes, photographs, etc. You received no response to your requests.

Mr. Sikyta informed us that he received only one of your requests, and responded to the request on July 23. However, as noted above, the email address was incorrect and the email was not delivered. Mr. Sikyta states there was no "bounce back" so he assumed you had received his response.

Per the undersigned's request, Mr. Sikyta emailed you on July 31, forwarding the July 23 email that had not been delivered.¹ He clarified he was withholding the requested records under the exception in Neb. Rev. Stat. § 84-712.05(5) pertaining to investigatory records. Mr. Sikyta also cited the exceptions in § 84-712.05(2) (medical records) and (27) (vital records). He apologized for the email error and "wish[ed] you and your family the best"

DISCUSSION

In our August 11, 2025, letter, we informed you that while access to public records in Nebraska is broad, it is not absolute. Section 84-712 of the NPRS "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). In this respect, Neb. Rev. Stat. § 84-712.05 gives public bodies the discretion to withhold public records falling within the various categories listed in the statute except when those records have been "publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties."

The exception in § 84-712.05(5), cited by Mr. Sikyta as one basis to withhold the requested records, applies to

[r]ecords 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 subdivision does not require access to or copies of informant identification, the names or identifying information of members of the public making complaints or inquiries, other information which would compromise an ongoing criminal investigation, or information which may be withheld from the public under another provision of law. For purposes of this

¹ The undersigned did not receive Mr. Sikyta's July 31 email as requested since the undersigned's email address was incorrect.

subdivision, family member means a spouse, child, parent, sibling, grandchild, or grandparent by blood, marriage, or adoption[.]

“Statutory interpretation begins with the text, and the text is to be given its plain and ordinary meaning. An appellate court will not resort to interpretation to ascertain the meaning of words which are plain, direct, and unambiguous.” *State ex rel. Peterson v. Shively*, 310 Neb. 1, 14, 963 N.W.2d 508, 518 (2021). The plain and ordinary reading of § 84-712.05(5) indicates that a law enforcement agency may withhold records it develops or receives in the course of an investigation. Exceptions within the exception include (1) records relating to the presence of drugs or alcohol in any body fluid of any person; and (2) records relating to the cause of death arising out of employment once an investigation is concluded when requested by a family member of the deceased. The records you have requested—the autopsy report, associated reports, and photos—fit squarely within the parameters of § 84-712.05(5), and neither exception applies. Therefore, we find that the Garfield County Attorney may keep the requested records confidential under the investigatory records exception in § 84-712.05(5). This conclusion is consistent with previous dispositions where we determined statutory exceptions to disclosure applied to autopsy records and associated records.²

You assert in your petition the NPRS and certain “autopsy statutes” give surviving family members specific access to death investigation records, “especially when the cause and circumstances are unresolved.” As noted above, § 84-712.05(5) gives surviving family members access to records relating to the death of a public employee arising out of employment once the investigation is concluded. The “autopsy statutes” cited in your petition (§§ 23-1824 and 23-1827³) contain no such access. Moreover, “[t]he public records statutes apply ‘equally to all persons without regard to the purpose for which the information is sought.’” *BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020). However, we would also point out that the exceptions to disclosure listed in § 84-712.05 simply permit nondisclosure; they do not require confidentiality. Consequently, we believe that the Garfield County Attorney may give you access to autopsy records and associated records if he chooses to do so. He is not required to keep them confidential under the NPRS. And while he may decline to provide you copies of the requested records, he could allow a visual inspection at his discretion.

² See, e.g., *File No. 20241046; Dodge County Attorney’s Office; Katherine R. Chadek, Petitioner* (March 26, 2024); *File No. 21-R-131; Nebraska State Patrol; Harry N. MacLean, Petitioner* (September 13, 2021); *File No. 17-R-143; Dundy County Attorney and Dundy County Sheriff’s Office; Donald Drillian and Kathryn Musso, Petitioners* (November 9, 2017); *File No. 16-R-109; Cedar County Attorney, Cedar County Sheriff; David Domina o/b/o Estate of Frank Potts, Jr., Petitioner* (March 10, 2016); *File No. 11-R-119; Omaha Police Department; Petitioner Tony Secrest, United Heartland Insurance Company* (June 2, 2011); and *File No. 08-R-152, Pierce County Attorney; Thomas B. Buttolph, M.D., Petitioner* (December 16, 2008).

³ We note that § 23-1824 pertains to autopsies for minors and § 23-1827 relates to organ and tissue donation.

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Finally, since we have concluded that § 84-712.05(5) provides a basis to withhold the requested records, it is unnecessary to determine whether the other exceptions cited by Mr. Sikyta also apply.

CONCLUSION

For the reasons discussed above, we conclude the Garfield County Attorney did not improperly deny you access to public records. Thus, no further action by this office is necessary and we are closing this file. If you disagree with the conclusion reached above, you may wish to consult with your private attorney to determine what, if any, additional remedies might be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Curtis A. Sikyta (via email only)

49-3920-31