



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

September 29, 2025

Via email: [REDACTED]
Jeremie Kerkman
[REDACTED]

RE: *Public Records Matter Involving Lower Platte South Natural Resources District*
Our File No. 20251106

Dear Mr. Kerkman:

This letter is in response to your public records petition received by this office on September 12, 2025, in which you sought our review of the response to your public records request by the Lower Platte South Natural Resources District (the "District") regarding a settlement agreement between the District and a former employee. We have reviewed your petition in accordance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024), and our conclusions are set forth below.

FACTS

Our understanding of the facts in this matter comes from your petition to this office, the materials attached thereto, and the undersigned's communications with the District's counsel, Corey Wasserburger. Per your petition, you submitted a request to the District for "all sections of a settlement agreement between the NRD and [a] former employee" You state that the settlement agreement ("Agreement") received was "completely redacted except for 3 sections." You included a copy of the District's response letter, dated September 5, 2025, through which the District provided a copy of the Agreement with approximately eight of its nine pages redacted. The letter asserted that these redactions were due to the Agreement "contain[ing] personal information regarding District personnel other than salary and routine directory information" The letter went

on to state that “the portions of the separation agreement that pertain to financial compensation have been left unredacted.”

Following our receipt of your petition, the undersigned contacted Mr. Wasserburger and requested additional information regarding this matter. In describing the District’s rationale underlying the redactions, Mr. Wasserburger stated that the Agreement “contains the terms of separation between the District and its employee, . . . including facts, waivers of claims, and other matters personal to [the employee] that are not salary and routine directory information.” Per Mr. Wasserburger’s response, “[a]n unredacted copy of the Separation Agreement has not been made available to the public at any District meeting or hearing, nor has it been produced to the public in any other setting.”

Mr. Wasserburger also reported that the Agreement contained a “mutual confidentiality provision,” stating in this respect:

The District recognizes that a confidentiality provision is not controlling, in and of itself, as to whether a document may be withheld from the public. Nevertheless, the existence of that provision in the Separation Agreement is instructive as to whether [the employee] has a personal interest in the information contained in the document itself. In this instance, the Separation Agreement clearly contains personal information that may be withheld from the public in response to a public records request.

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.

Neb. Rev. Stat. § 84-712.01(1). Additionally, § 84-713(2) provides in pertinent part that “[a]ny claim or settlement agreement involving a public entity shall be a public record” Based on our review of this matter, there can be no dispute that the Agreement falls within the definition of “public records” under Nebraska law.

While the NPRS broadly authorize public access to public records, they are not absolute. As relevant to this case, § 84-713(2) permits public bodies, “to the extent permitted by sections 84-712.04 and 84-712.05 and as otherwise provided by statute,” to withhold “specific portions of the claim or settlement agreement” 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 pertinent to this matter, § 84-712.05(8) 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 those records:

. . .

(8) Personal information in records regarding personnel of public bodies other than salaries and routine directory information.

You have requested our “review of the remaining sections [of the Agreement] to determine if they were appropriately withheld.” Based on the undersigned’s communication with Mr. Wasserburger, the District has confirmed the Agreement contains personal information relating to the former employee. Please note that although § 84-712.03(1)(b) creates enforcement responsibility for the Attorney General under the NPRS, there is no statutory mechanism or other authority under Nebraska law enabling this office to review unredacted copies of requested records to determine whether such records have been improperly withheld. Pursuant to § 84-712.03(2), only the courts may conduct an *in camera* review of the requested records without redaction before determining whether a petitioner has been denied his or her rights under the NPRS. We will therefore rely on Mr. Wasserburger’s representations that the redactions in the Agreement protect personal information able to be withheld under § 84-712.05(8).

Moreover, 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”). In the absence of affirmative evidence to the contrary, we do not have cause to believe that the District or Mr. Wasserburger has acted in bad faith in this matter.

Finally, we will take this opportunity to briefly discuss the “mutual confidentiality provision,” which purportedly appears in the Agreement. According to Mr. Wasserburger, this provision supports the redactions because it “is instructive as to whether [the employee] has a personal interest in the information contained in the document itself.” It

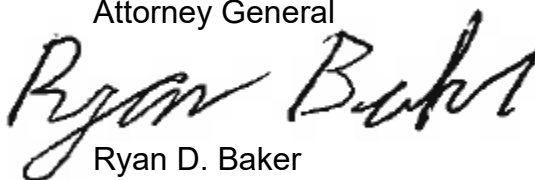
seems to us that any party to a settlement agreement would have a personal interest in the information contained in their settlement agreement notwithstanding the existence of a confidentiality provision. And we fail to see how a “personal interest” in the contents of an agreement means the contents constitute “personal information” under 84-712.05(8). As noted above, settlement agreements involving public entities are *public records*. In addition, § 84-713(4) expressly states that “a confidentiality or nondisclosure clause or provision contained in or relating to a settlement agreement shall neither cause nor permit a settlement agreement . . . to be withheld from the public.” Consequently, the existence of a confidentiality provision in the Agreement not only provides no basis to withhold any portion of the Agreement, it has no bearing on whether portions may be withheld under § 84-712.05(8).

CONCLUSION

For the reasons set forth above, we conclude that you have not been unlawfully denied access to the requested public records. In the absence of evidence to the contrary, we do not have cause to believe that either the District or Mr. Wasserburger has improperly withheld contents of the Agreement. As a result, no further action by this office is warranted, and we are closing this file. If you disagree with our findings set out in this letter, you may wish to consult with an attorney to determine what, if any, additional remedies may be available to you under the NPRS.

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: Corey Wasserburger (via email only)