



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

September 30, 2025

Via email at [REDACTED]
Jack Elsner
[REDACTED]

RE: *Public Record Matter Involving the City of Bellevue*
Our File No. 20251110

Dear Mr. Elsner:

This letter is in response to your public records petition received by this office on September 15, 2025. Your petition challenges the denial of a public records request you submitted to the City of Bellevue (City) on September 9, 2025. Upon receipt, we forwarded your petition to Assistant City Attorney Daniel Willis and requested a response, which we received on September 23. After receiving the City's response, we asked Mr. Willis if he would be willing to provide this office the responsive records, redacted as necessary. Those records, consisting of one email and one letter, were emailed to the undersigned on September 24. We considered your petition, the City's response, and the responsive records we received in accordance with the provisions of 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 September 9, 2025, records request sought the following records:

- (1) Copies of correspondence from any hotel operator, hotel developer or affiliated related parties ("Hotel Developer") expressing a commitment or intention to develop a hotel within the entertainment district.

- (2) Any concurrent or subsequent correspondence and/or documentation from the Hotel Developer expanding upon, modifying, documenting or illustrating its commitment or plan to develop a hotel within the entertainment district.

Mr. Willis responded to your request on September 15, denying you access to the requested records under the exceptions to disclosure in Neb. Rev. Stat. § 84-712.05(3) ("Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose"), and subsection (7) ("Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale").

You assert in your petition that the City "has already publicly disclosed the existence of commitments from hotel developers through official communications," consisting of an April 18, 2024, press release and a recent request for proposals. You argue "[t]he city has thus confirmed the existence of hotel developer commitments and has even disclosed specific investment amounts and hotel brands," but "has not disclosed the identities of all parties that have made these commitments and with whom the city may be conducting negotiations."

You further assert the City's denial was overly broad and failed to meet the requirements in the NPRS for the following reasons:

1. You are "not seeking trade secrets, proprietary commercial information, or detailed negotiation strategies" but rather "[t]he identity of parties who have made public commitments to develop hotels" within the City's entertainment district. You argue such disclosure "serves a clear public purpose by allowing citizens to understand which entities their city government is working with on significant economic development projects."
2. Even if the requested records contain information that may be redacted under the exceptions relied on by the City, "the proper remedy is redaction of the exempt material, not wholesale denial of the request." The City's blanket denial of the records "violates the fundamental principle that exemptions to the [NPRS] should be narrowly construed."
3. Finally, the public interest served by the disclosure of the information, relating to transparency, accountability and the public understanding of the project, "outweigh any speculative harm to business competitors, particularly when the city has already publicly announced the existence of these commitments."

As noted above, the undersigned had the opportunity to review the responsive records. Both records were letters of intent for hotel development within the City's

entertainment district. The email contained “basic aspects” relating to the proposed hotel, while the letter contained specific terms and conditions for the proposed project. According to Mr. Willis, the City is currently in negotiations with the two hotel developers who submitted the letters of intent.

DISCUSSION

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, while access to public records is broad, it is not absolute. There is no 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 or § 84-712.08.

Section 84-712.05 of the NPRS contains twenty-nine categories of public records that may be withheld at the discretion of the records custodian “unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties” The City is relying on the exception in § 84-712.05(3) as one basis to withhold the responsive records described above. While not clear from the denial letter, the City is specifically relying on that portion of the exception pertaining to “proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose.”

In our disposition letter to *File No. 21-R-120; City of Omaha, David A. Lopez, Petitioner*, issued July 13, 2021,¹ we considered whether the City of Omaha could withhold records relating to an application for tax-increment financing (TIF) by a gaming company under the proprietary or commercial information exception in § 84-712.05(3). Our analysis began with a summary of *Aksamit Resource Management LLC v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 907 N.W.2d 301 (2018), the only Nebraska case construing the exception. In *Aksamit*, the Nebraska Public Power District (NPPD) withheld specific cost and revenue information in response to public records requests submitted by two limited liability companies (and potential competitors of the district) under § 84-712.05(3). The district court found the requested information was in fact proprietary or commercial to NPPD and, if disclosed, would give an advantage to NPPD’s competitors. The district court further concluded that disclosure would “result in disadvantage to its ratepayers by denying them ‘the benefits of a successful and profitable operation and conduct of the business of the district,’” and that “[s]uch a result would serve no public purpose.” *Id.* at 121, 907 N.W.2d at 307.

¹ Disposition letters may be accessed at <https://ago.nebraska.gov/disposition-letters>.

On appeal, the Nebraska Supreme Court noted NPPD focused on the confidentiality of the information and the competitive harm it would suffer in the event responsive records were disclosed. The court acknowledged “[t]here is no real dispute that Aksamit seeks to compete with NPPD.” *Id.* at 119, 907 N.W.2d at 306. However, since the exception’s components “give advantage to business competitors” and “serve no public purpose” are connected by the conjunction “and,” the court found that “both requirements must be met for the exception to become operative.” *Id.* at 124, 907 N.W.2d at 309.

With respect to the “public purpose” to be served, the court stated: “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.’ When we consider the meaning of the words ‘public purpose’ in § 84-712.05(3), liberal public disclosure of the records of public entities is an important factor.” *Id.* at 124, 907 N.W.2d at 309. The court concluded while NPPD established that releasing the requested information would give advantage to its competitors, it failed to establish by clear and convincing evidence that disclosing the information would serve no public purpose. Consequently, NPPD was not entitled to withhold the information under § 84-712.05(3).

We found there was a significant difference between the records sought in *Aksamit* and the application materials sought by the petitioner in File No. 21-R-120. In *Aksamit*, requesters sought detailed cost and revenue information for each of NPPD’s generation units. In this respect, the court noted the public policy necessitating a liberal construction of §§ 84-712 to 84-712.03 when *fiscal records* of a public entity are involved. *Id.* at 122, 907 N.W.2d at 307-08. The court also noted there was nothing in the statutes that would operate to deny the public access to public power districts’ books and records and the Legislature had not, to date, “exclude[d] a public power district’s competitive information from public scrutiny” *Id.* at 127, 907 N.W.2d at 310. In contrast, the application materials were financial and business records of a *private company* submitted to the City with respect to an application for a redevelopment project under the Community Development Law. They were not the fiscal records of a governmental body which, by statute, require a more liberal construction as to disclosure.

We also acknowledged the difficulty in determining what constitutes a “public purpose” under § 84-712.05(3). The petitioner had asserted “the public has the right to see the withheld records ‘so that the public may engage in meaningful and informed scrutiny of the TIF application—and engage with their elected officials’” However, the city attorney “argue[d] that construing § 84-712.05(3) in such a way to require the public ‘to have access to any information submitted to the City to confirm that the City is analyzing, reviewing, and awarding everything to its individual standards’ would render the exemption ‘meaningless since everything could have a public purpose.’” We agreed, declining to find how the public purpose could be served by providing access to the withheld records to the petitioner, an attorney representing a known competitor.

In concluding the City of Omaha could rely on § 84-712.05(3) to withhold the private company's TIF application materials, we stated:

[T]his office is unwilling to construe the "and serve no public purpose" clause so broadly as to swallow the exception clearly authorized in § 84-712.05(3) to protect the proprietary information of private parties submitted to governmental entities. We also believe that if we were to direct the release of such proprietary materials, it would have a chilling effect on businesses' dealings with governmental entities relating to services, contracts, permits and economic development.

Disposition Letter in File No. 21-R-120 at 10.

In the present case, we have reviewed and confirmed that the records are in fact letters of intent to the City relating to proposed hotel development in the City's entertainment district. Each document contains terms and conditions relating to a proposed project. The records at issue here, as in File No. 21-R-120, are from private companies, and do not concern the fiscal records of a public entity as in *Aksamit*. Moreover, Mr. Willis has represented to the undersigned that the City is currently in negotiations with the developers who submitted the letters of intent. For the same reasons discussed in the disposition letter summarized above, we will decline to direct the City to produce the records to you since doing so would serve no *public* purpose and will likely have a chilling effect on businesses who may be interested in the City's ongoing economic development projects.

Finally, since we have determined the City may continue to rely on the exception in § 84-712.05(3) to withhold the letters of intent, it is unnecessary for us to consider whether § 84-712.05(7) also provides a basis to withhold the records.

CONCLUSION

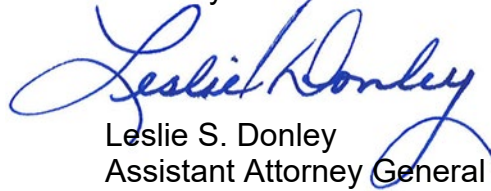
For the reasons discussed above, we conclude the City may continue to withhold the records under § 84-712.05(3). Since no further action by this office is necessary, we are closing this file. If you disagree with the conclusion reached in this disposition letter,

Jack Elsner
September 30, 2025
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you are free to pursue the other legal remedies available to you under Neb. Rev. Stat.
§ 84-712.03 of the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Daniel Willis (via email only)

49-3947-31