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Office of the Attorney General

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MIKE HILGERS
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LESLIE S. DONLEY
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October 20, 2025

Malik Stelly #86885
[REDACTED]

RE: *Public Records Matter Involving the Omaha Police Department*
Our File No. 20251115

Dear Mr. Stelly:

This letter is in response to your petition received by this office on October 3, 2025, in which you sought our assistance regarding your September 10, 2025, records request to the Omaha Police Department (OPD). We forwarded a copy of your petition to Deputy City Attorney Bernard J. in den Bosch upon receipt, and discussed it with him on October 8. We considered this matter under the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024). Our findings are set forth below.

RELEVANT FACTS

According to your petition, you sent a public records request to the OPD seeking, among other things, “records of the NCJIS searches of Malik Stelly for the dates, January 10, 2017 through January 11, 2017” Lieutenant Neal Bonacci timely responded on behalf of the OPD, denying your request under the exception to disclosure in Neb. Rev. Stat. § 84-712.05(5). Lt. Bonacci informed you “[t]he information requested is considered records developed by law enforcement agencies charged with duties of investigation, and as such is not considered public record.”

You believe you are entitled to the records, asserting the records “were publicly disclosed in open court.” In support of this assertion, you cite to certain testimony at your “trial,”¹ where

¹ While not specified in your petition, we understand you stood trial for and was convicted of the murder of D’Angelo Branch in Douglas County District Court in 2017. See *State of Nebraska v. Malik Stelly*, Case No. CR 17-678.

. . . Officer King testified, in determining if an individual has a car registered to them, Officers use the NCJIS state database that will tell you if a vehicle is plated and registered to a party, so you can enter a party's name and it will determine what vehicles are registered to them (BOE 1374:18–1375:4). Further Detective Herfordt testified in open court he looked up Malik Stelly in NCJIS (BOE 1397:25–1398:7).

You further assert that disclosure of the times your name was searched in the database on the dates listed “would not be a risk to circumvention of the law.”

DISCUSSION

The NPRS generally allow Nebraska residents and other interested persons 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. However, while the NPRS do provide access to public documents, they are 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.

Neb. Rev. Stat. § 84-712.05 of the NPRS is comprised of twenty-nine categories of records that may be kept confidential 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, OPD is relying on the exception in § 84-712.05(5) as its basis to withhold the NCJIS searches. This provision pertains 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 training²

Your petition asserts the searches have been “disclosed in open court” based on the testimony described above. We disagree. One officer testified that NCJIS searches are conducted on individuals to determine what vehicles may be registered to that party. The detective testified your name was searched in the database. Neither suggests that

² There are two exceptions to the exception: (1) records relating to the presence of drugs or alcohol in any body fluid of an individual; and (2) records relating to the cause of death arising from or related to employment once an investigation is concluded when requested by a family member of the deceased.

the actual NCJIS searches were offered and received into evidence.³ Thus we find your claim that the records have been disclosed, foreclosing OPD's ability to withhold them under § 84-712.05(5), is without merit. And even if the searches were disclosed, an open question exists whether the qualifier in § 84-712.05 would apply to OPD. OPD did not prosecute your case. It seems to us the public body responsible for disclosing the records would be the only entity prohibited from relying on an exception to withhold them.

As to the propriety of OPD withholding the records, this office has consistently held, relying in large part on the plain language of the exception,⁴ that law enforcement agencies may withhold records developed or received by those agencies in the course of an investigation.⁵ We have no basis to conclude otherwise with respect to your request. There is no question the OPD is a law enforcement agency which is charged with duties of investigation of persons, institutions, and businesses. See Neb. Rev. Stat. § 14-102(25) (Cum. Supp. 2024) and Neb. Rev. Stat. § 14-606 (2022). The searches you requested were developed or received by the OPD in the course of its investigation into the fatal shooting of D'Angelo Branch on January 11, 2017. Consequently, we find the requested records may be withheld under § 84-712.05(5).

CONCLUSION

You have not established that the NCJIS searches were disclosed in open court. And even if they were, it is unclear whether the qualifier in Neb. Rev. Stat. § 84-712.05 would apply to OPD since OPD did not disclose the records. Consequently, OPD may continue to withhold the records under Neb. Rev. Stat. § 84-712.05(5). Since we have identified no violations of the NPRS, no further action by this office is warranted, and we are closing this file.

³ If you are in possession of the bill of exceptions for your criminal trial, you should be able to determine whether the searches are part of the record.

⁴ "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 Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

⁵ See, e.g., *File No. 20251098, Public Records Matter Involving the Omaha Police Department [Williams]* (August 29, 2025); *File No. 20251031, Public Records Matter Involving the Omaha Police Department [Bradrick]* (March 17, 2025); *File No. 20241201, Public Records Matter Involving the Omaha Police Department [Brown]* (November 1, 2024); *File No. 20241200, Public Records Matter Involving the Lincoln County Sheriff's Office [Kohler]* (October 31, 2024); *File No. 20241176, Public Records Matter Involving the Lancaster County Sheriff [Kaluza]* (September 25, 2024). You may access the disposition letters for these files at <https://ago.nebraska.gov/disposition-letters>.

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If you disagree with our conclusion, you may wish to discuss this matter with your private attorney to determine what other remedies are available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Bernard J. in den Bosch

49-3967-31