



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

October 23, 2025

Via email at [REDACTED]
Daniel Libit
[REDACTED]

RE: *Public Record Matter Involving the University of Nebraska*
Our File No. 20251117

Dear Mr. Libit:

This letter is in response to your public records petition received by this office on October 8, 2025. You are challenging the denial of your public records request submitted to the University of Nebraska (University) on October 1, 2025. Upon receipt, we forwarded your petition to Molly McCleery, Associate General Counsel and Director of University Records, and requested a response. We asked Ms. McCleery to provide us a description of the records withheld and to clarify the basis for withholding the records, i.e., trade secrets or proprietary or commercial information. We received Ms. McCleery's response on October 16. We considered your petition and the University's response in accordance with the provisions of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024). Our findings and conclusion in this matter are set out below.

RELEVANT FACTS

Your October 1, 2025, public records request sought the following records:

1. Records or a disclosure of the total amount of money the University has expended in direct payments to University athletes under the House v. NCAA settlement, during the period July 1, 2025, through September 30, 2025.

2. Records or a disclosure of the total number of transactions made by the University in connection with such direct payments to athletes during the same time period.
3. To the extent such information is disclosable, I also request any available breakdown of these expenditures by sport and/or gender.

You informed Ms. McCleery “the University is required to report this information as part of the NCAA’s membership financial reporting system,” and “expect[ed] the University to retain or have access to the relevant records.”

After acknowledging receipt of your request on October 1, Ms. McCleery timely responded to your request on October 7. She informed you the University declined to provide responsive records “as such materials are not subject to disclosure under the Nebraska Public Records Act, Neb. Rev. Stat. § 84-712.05(3).”

BACKGROUND

At the center of this dispute is the recent settlement in a federal class action lawsuit *In re: College Athlete NIL Litigation*, No. 4:20cv-03919 (N.D. Cal.) [*House v. NCAA*]. Under the settlement agreement, effective July 1, 2025, Division I schools like the University are allowed to share revenue directly with student-athletes for using their name, image, and likeness (NIL). The annual cap in 2025-2026 is approximately \$20.5 million, which is expected to grow by four percent each year until 2034-2035. The settlement agreement also provides for \$2.85 billion in damages for student-athletes who participated in sports between 2016 and 2024. The settlement agreement allows student-athletes to continue to sign NIL agreements with third parties subject to enforcement standards by the NCAA and conferences to prevent schools from circumventing the salary cap. Any deals above \$600 must be reported to the school and a third-party clearinghouse to ensure they represent “fair market value.” A new non-NCAA authority—the College Sports Commission (CSC)—was established to ensure compliance with the settlement rules. The CSC uses a monitoring system known as the College Athlete Payment System (CAPS). The University is required to use CAPS to report its revenue-sharing payments.¹

YOUR PETITION

Your petition correctly presumes that the University is relying on the trade secret exception in Neb. Rev. Stat. § 84-712.05(3) as the basis to withhold the requested information. However, you assert the exception does not apply to “aggregated totals of athlete revenue-sharing payments” and that “[s]uch a broad and liberal application of the

¹ See <https://www.ncsl.org/state-legislatures-news/details/what-the-ncaa-settlement-means-for-colleges-and-state-legislatures> and “New Era Begins As House Settlement Approved,” accessible at <https://bigten.org/mgolf/article/93/>.

trade secret exemption undermines both the spirit and purpose of the Law.” You argue since the University is required to disclose coaches’ and administrators’ employment agreements, “it is unreasonable to claim that it can withhold even the top-line totals of athlete compensation over a three-month period.” Further, disclosure is warranted since “[t]he University of Nebraska has already publicly committed to distributing its full \$20.5 million allocation under the House v. NCAA settlement.” Lastly, you conclude “[t]here is no credible, good-faith argument that revealing how much of that amount has been disbursed to date would compromise any meaningful economic interest.”

THE UNIVERSITY’S RESPONSE

Ms. McCleery informs us the records at issue consist of seven spreadsheets containing information on individual payment transactions with student-athletes. Identifying information about the student-athletes is contained in the spreadsheets, including: student name; University student ID number; email address; payment to the student or the student’s company (i.e., the student’s LLC); date of birth; phone number; sport; and monthly payment amount. The spreadsheets include (1) the total amount of money paid in the month and (2) the total number of transactions in the month—information responsive to items one and two of your request. Ms. McCleery advises that information responsive to the third item in your request, i.e., sport and gender breakdown, can be obtained from student sport information. Ms. McCleery states that “[t]he University maintains that the information conveyed in these records demonstrates the University’s method for allocating the \$20.5 million revenue sharing cap and is trade secret material not subject to disclosure under the exception contained in Neb. Rev. Stat. § 84-712.05(3).”

Trade Secret Exception

Nebraska’s Trade Secret Act² defines “trade secret” as

information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that:

(a) Derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Neb. Rev. Stat. § 87-502(4) (2024). The University asserts its method for allocating the \$20.5 million cap meets both prongs of the definition. Ms. McCleery states “[t]he

² Neb. Rev. Stat. §§ 87-501 to 87-507 (2024).

University's method of allocating the cap is the University's attempt to use resources in the most strategic way to spur recruitment and retention of top performing student-athletes and drive success in particular athletic programs." Disclosing the information you seek "would provide a competitor with [an] understanding of: how many athletes have received money, what teams have received money, what teams have not received money, and how much money the University has left of the cap for use during the remainder of the academic year to recruit student-athletes pursuant to the [NCAA] Transfer Portal and to retain its current student-athlete rosters." (Footnote omitted.) Ms. McCleery asserts that if the University's method of allocating the \$20.5 million were disclosed, competitor schools could gain a competitive edge by adjusting their own spending, resulting in a competitive disadvantage to the University.

To illustrate further, Ms. McCleery explains that

if a rival school knew that the University was allocating a specific percentage of the revenue sharing cap towards its football program, had a certain amount of cap dollars left (based on how much money had already been spent and in how many payments), and was recruiting a particular student-athlete to transfer at midyear, the rival institution could attempt to offer the same student-athlete a higher amount of money based on its knowledge of what the University could offer. Or, if a peer institution with a rival volleyball team knew that the University was allocating a particular percentage of the revenue sharing cap to the volleyball team, it could choose to allocate a higher percentage of its own cap the following year to gain an advantage.

Ms. McCleery refutes your assertion that no "meaningful economic interest" would be compromised by disclosing the requested information. Rather, she believes the University's ability to compete with peer institutions would be hampered, "compromis[ing] the University's economic interests" Also, as applicable to the first prong, Ms. McCleery represents that the University's allocation method "is not ascertainable by proper means by others who can obtain economic value from its disclosure or use."

With respect to meeting the definition's second prong, Ms. McCleery informs us the University's allocation method "is subject to reasonable efforts under the circumstances to maintain its secrecy." Those efforts include the ". . . Athletics department . . . intentionally limit[ing] the number of people internal to the University involved in the process, procedure, and recordkeeping of the revenue share allocation and distribution and . . . limit[ing] external disclosure of such information." As to the reporting requirements referenced in your petition, Ms. McCleery clarifies that the financial metrics the University reports to the NCAA annually are not the same as the records you are seeking, and "they are not a real time snapshot of spending at a given moment but rather a retrospective annual report."

University Employment Agreements v. Revenue-Sharing Payments to Student-Athletes

In response to your argument that since the University is required to disclose employment agreements for coaches and administrators, it is unreasonable to withhold athlete compensation, Ms. McCleery advises the two are not analogous. She states that “[p]ayment to student-athletes pursuant to settlement terms in *House* is not compensation; it is payment to student-athletes for a license to use their NIL.” She further states that coaches’ and administrators’ employment contracts “are routinely disclosed in response to requests and posted online on the University’s website,” and salary and routine directory information is expressly excepted from the personal information exception in Neb. Rev. Stat. § 84-712.05(8). Ms. McCleery asserts that “salaries and employment agreements for coaches and administrators are not trade secrets [since] they do not derive independent economic value from not being known to or ascertainable by proper means by others who can obtain economic value from their disclosure or use and are not the subject of efforts that are reasonable under the circumstances to maintain their secrecy.” Finally, Ms. McCleery notes that the University’s method of allocation relates to students, not personnel, and “[d]espite having entered a new era of college athletics, student-athletes are not employees.”

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, the NPRS are not absolute. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). Neb. Rev. Stat. 84-712(1) (2024) expressly provides that the right to examine or obtain copies of public records exists “[e]xcept as otherwise provided by statute” The definition of “public records” in Neb. Rev. Stat. § 84-712.01(1) (2024) sets out an exception from that definition “when any other statute expressly provides that particular information or records shall not be made public” Thus, in those instances where records requested under the NPRS are excepted from disclosure by statute, there is no right of access. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. *Aksamit Resource Management LLC v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018); *State ex rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 790, 587 N.W.2d 100, 105 (1998).

Section 84-712.05(3) is one of 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 exception at issue here pertains to “[t]rade 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” There is no question that the University has not disclosed the method of allocation in a court, proceeding, open meeting or pursuant to its duties, which would obviate its ability to withhold the requested information under § 84-712.05(3).

In the present case, the University has met its burden in showing its method for allocating the \$20.5 million cap constitutes a trade secret. Ms. McCleery has adequately described—in real world terms—the information that could be derived by rival institutions by disclosing the requested information, i.e.:

1. The number of athletes receiving money
2. The teams receiving money
3. The teams not receiving money
4. The amount of money left for recruiting during the remainder of the year out of the Transfer Portal, generally and by sport
5. The amount of money left to retain its current rosters of student-athletes, generally and by sport

With this information, rival institutions could adjust their own spending decisions, placing the University at a competitive disadvantage. In addition, Ms. McCleery has represented to this office that the University has taken reasonable steps to limit internal access to the information and its external disclosure. Ms. McCleery also adequately refuted your attempt to analogize coaches’ and administrators’ employment contracts to revenue-sharing payments to student-athletes, i.e., student-athletes are *not* University employees.

Finally, since we have concluded the trade secrets exception allows the University to withhold the revenue-sharing payment information, it is not necessary for us to determine whether the other exceptions cited by the University, i.e., the federal Family Educational Rights and Privacy Act (FERPA) and Neb. Rev. Stat. § 84-712.05(1), also apply.

CONCLUSION

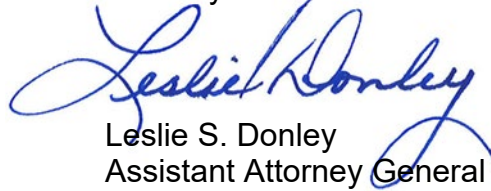
For the reasons stated above, we believe the University has sustained its burden to show the requested information pertaining to revenue-sharing payments to its student-athletes for the three-month period beginning July 1, 2025, and ending September 30 2025, constitutes a trade secret. The University has demonstrated the economic value that could be derived with the information’s release and the competitive harm the University could suffer as a result. It also appears the University has maintained the secrecy of this information by taking steps to limit both internal and external access. Consequently, we find no violation of the NPRS relating to the University’s withholding under Neb. Rev. Stat. § 84-712.05(3), and we are closing this file.

Daniel Libit
October 23, 2025
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If you disagree with the conclusion reached above, you may wish to review the other remedies available to you under Neb. Rev. Stat. § 84-712.03.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Molly McCleery (via email only)

49-3973-31