



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

December 5, 2025

Via email to [REDACTED]
Dale King
[REDACTED]
[REDACTED]

RE: *Public Record Matter Involving Region 26 Council*
Our File No. 20251143

Dear Mr. King:

This letter is in response to your petition received by this office on November 17, 2025, in which you sought our review of your public records request submitted to the Region 26 Council (“Region 26”) on November 6, 2025, concerning certain phone recordings. 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 is based on your petition to our office, the materials attached thereto, and the undersigned’s communications with counsel for Region 26, Heather Sikyta. Per the correspondence attached to your petition, you sought “the phone recordings for BA25110119 in addition to the phone calls surrounding the siren not going off” on an unknown date. Region 26 director Alma Beland responded via email on November 7, 2025, stating that counsel advised that disclosure of the requested recordings “would require a court order.”

On November 25, 2025, the undersigned contacted Director Beland regarding your petition. In an email dated November 26, 2025, Ms. Sikyta, on behalf of Region 26, initially stated that the initial request was not “consider[ed] . . . to be a public records request” because your request “made no reference to the public records law” or otherwise stated that you were “requesting public records.” Ms. Sikyta confirmed to the undersigned that

Dale King
December 5, 2025
Page 2

Region 26 was in possession of the requested recordings but “consider[ed] all recordings as investigatory records of a law enforcement agency” as contemplated under § 84-712.05(5). Following subsequent communication, Ms. Sikyta described that the BA25110119 phone call was a 911 call relating to an emergency, and Region 26 acts as an “arm” of agencies such as local police departments, county sheriffs, fire departments, and other bodies.

DISCUSSION

Public Records and the Investigative Exception

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

[a]ll 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) (2024). Given this broad definition, we conclude that Region 26 is a public body and that the phone recordings constitute public records of or belonging to Region 26.

While the NPRS broadly authorizes public access to public records, they are not absolute. 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 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). Consequently, it is the burden of Region 26 to show that the investigatory exception applies. Pertinently, § 84-712.05(5) 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 the records:

...

(5) Records 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

Additionally, the Nebraska Supreme Court has clarified:

A public record is an investigatory record if (1) the activity giving rise to the document sought is related to the duty of investigation or examination with which the public body is charged and (2) the relationship between the investigation or examination and that public body's duty to investigate or examine supports a colorable claim of rationality.

Jacob v. Nebraska Bd. of Parole, 313 Neb. 109, 125, 982 N.W.2d 815, 829 (2022).

As a threshold matter, we are mindful that “[b]ecause the Legislature has expressed a strong public policy for disclosure, [courts] must narrowly construe statutory exemptions shielding public records from disclosure.” See *Evertson v. City of Kimball*, 278 Neb. 1, 13, 767 N.W.2d 751, 762 (2009). Given this public policy and the directives of the Nebraska Supreme Court, we believe that Region 26 is not a law enforcement agency or otherwise a “public bod[y] charged with duties of investigation or examination of persons, institutions, or businesses” contemplated by § 84-712.05(5). It is our understanding that Region 26 is an interjurisdictional emergency management organization providing services, including emergency management and 911 dispatch services, to several counties within central Nebraska. While Region 26 may cooperate with law enforcement agencies, its primary role is that of a bridge between members of the public and those law enforcement agencies. Region 26’s involvement ends when it has relayed the emergency call to the respective agency that is charged with investigative duties. Given Region 26’s separation from law enforcement bodies and its limited role in directing information to the appropriate agency, we conclude that Region 26 is not a public body contemplated by § 84-712.05(5). See *State ex rel. Cincinnati Enquirer v. Hamilton Cty*, 662 N.E.2d 334, 337 (1996) (observing that “911 operators simply compile information and do not investigate”).

Notwithstanding the foregoing, we have previously considered the question of whether 911 phone call recordings may be withheld under the investigative exception. In *File No. 08-R-126; City of Lincoln; Lincoln Journal Star, Petitioner* (May 27, 2008), we determined in pertinent part:

We have considered whether information on 911 tapes constituted investigatory information in the context of previous records petitions presented to this office. In general, we have concluded that the exemption from disclosure for investigatory records could apply to those portions of such a tape which were clearly investigatory in nature under § 84-712.05 (5). For example, if a police informant was identified by name on a 911 tape from a law enforcement agency, then we believe that such information could be redacted from the tape before it was provided in response to a public records request. However, we do not understand that any such information is contained on the 911 tape at issue in the present case. Rather, the focus of that 911 call was a medical emergency, not the investigation of a crime (assuming that the City's Emergency Communications/911 Center is a law enforcement agency or other public body charged with duties of investigation or examination of persons, institutions, or businesses).

In a similar vein, the Ohio Supreme Court has observed that because "911 calls generally precede" the commencement of an investigation by law enforcement, they cannot be properly considered part of the investigation. See *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 662 N.E.2d at 337.

Even if Region 26 can properly be considered a law enforcement agency or other public body charged with duties of investigation, we are not persuaded that the phone recordings in question were either created as part of an investigation or contain information relating to an investigation. Our understanding is that the phone calls in question do not involve information of the sort contemplated by our prior disposition quoted above. Moreover, we find the reasoning of the Ohio Supreme Court in *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, *supra*, to be persuasive. Based on our review of this matter, we will request Region 26, by providing a copy of this letter to Ms. Sikyta, to produce the requested recordings. We would ask counsel to provide you with these recordings no later than December 15, 2025.

Response Requirements for Public Bodies

As a final matter, we will take this opportunity to advise Region 26 of its obligations under the NPRS when responding to public records requests. We first note the statement by Ms. Sikyta that Region 26 did not consider your initial email to be a request made pursuant to the NPRS warranting compliance with the requirements for denials of record requests set forth in § 84-712.04. While your initial email did not specifically assert that your request was made pursuant to NPRS, the only requirement is that the request be written, and the NPRS do not require specific words or phrases to be included in a request. Further, the public records statutes provide the right of access to public records without regard for the requester's identity or reasons underlying his or her request. See *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 800-01, 943 N.W.2d 231, 247 (2020).

In a similar vein, § 84-712.04(1) provides that when a public body denies a record request, it must provide a written response containing the following information:

- (a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;
- (b) The name of the public official or employees responsible for the decision to deny the request; and
- (c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

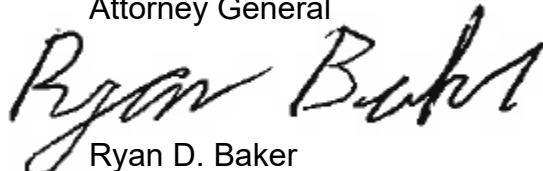
This information was not included in Region 26's response. Public bodies such as Region 26 must comply with these obligations as well as all other obligations imposed on public bodies by the NPRS.

CONCLUSION

Based on the foregoing, we conclude that Region 26 improperly withheld the requested phone recordings. We therefore direct Region 26 to produce these recordings no later than December 15, 2025, as set forth above.

Sincerely,

MIKE HILGERS
Attorney General



Ryan D. Baker
Assistant Attorney General

c: Heather Sikyta (via email only)