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December 22, 2025

Malik Stelly
[REDACTED]
[REDACTED]

RE: *Public Record Matter Involving the Omaha Police Department*
Our File No. 20251151 (Consolidated)

Dear Mr. Stelly:

This letter is in response to your petition received by this office on December 2, 2025, in which you sought our assistance regarding your records request dated November 3, 2025, which was received by the Omaha Police Department (OPD) on November 10, 2025. You received the OPD's response to this request on December 3. On December 11, 2025, this office received another petition from you in which you claim the OPD's response to your November 3 request was "insufficient in its entirety." At our request, Deputy City Attorney Bernard in den Bosch provided us responses to your two petitions on December 4 and 17. We considered this matter in accordance with the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024). Our findings are set forth below.

RELEVANT FACTS

Your November 3 request sought access to the following records:

1. Copies of Policies/Procedures for receiving and preserving Shotspotter data from SST Inc. (Shotspotter) and from Douglas County Communications
2. Copies of Policies/Procedures for Universal Forensic Extraction Devices "Cellebrite" which was disclosed in open court at Stelly's trial; see attached (BOE) 1383:1-(1388:6) (BOE) 1402:19-(1404:21).

3. Copy of the original Cellebrite data extraction report for Stelly's confiscated LG Model LS 751 cellular telephone from case number AJ37197 which was confiscated from Stelly in January 2017. This data was disclosed in open court at Stelly's trial by OPD Officer Nicholas Herfordt, and a redacted version of the Cellebrite data extraction report was submitted as an exhibit at Stelly's trial which were seven text messages from a conversation string that was not presented in its entirety but instead highlighted inculpatory phrases; see attached (BOE) 1396:6–(1397:22), (BOE) 1405:19–(1410:9).

OPD Lieutenant Neal Bonacci responded to your request by letter dated November 26, 2025, providing you two responsive OPD policies, i.e., "Evidence and Property Handling" and "Evidence—Search and Seizure of Cellular Phones and Electronic Devices." He informed you "[t]here [was] no policy specific to 'Celebrite' [sic] as it is simply a tool used for investigation. Its use is dictated by the policy provided." Lt. Bonacci denied you access to OPD's specific ShotSpotter policy¹ and "any information contained in the reports generated from ShotSpotter or information obtained from any digital evidence analysis through Celebrite [sic] related to this incident" pursuant to the exception to disclosure in Neb. Rev. Stat. § 84-712.05(5).² Lastly, Lt. Bonacci informed you that Douglas County Communications is responsible for 911 calls, not the City of Omaha.³

Your second petition cites to the prefatory language in Neb. Rev. Stat. § 84-712.05, which provides that public bodies may withhold the various records listed in the statute at their discretion unless the records have been "publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties . . ." You assert that all of the requested records have either been discussed or disclosed during your murder trial and, in the case of the OPD ShotSpotter policy, in other criminal cases.

Mr. in den Bosch asserts the prefatory language in § 84-712.05 pertains to the actual record and that "[a] reference to the existence of a public document does not mean that it cannot be withheld, rather the document itself must be disclosed in order to be subject to the preliminary language in Neb. Rev. Stat. Sec. 84-712.05." He states it appears you have the court records since you made citations to the record and that, if

¹ "ShotSpotter Gunfire Location Alert and Analysis Service."

² This exception 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 training . . .".

³ For the record, Lt. Bonacci emailed the undersigned on December 4, outlining a process to better inform incarcerated individuals, who are unable to use the city's online records portal, about the status of their requests.

any of the requested records were disclosed in open court, you would already have them. Mr. in den Bosch also notes that you acknowledge that a redacted version of the report responsive to no. 3 was admitted as an exhibit and it appears you have that report. He further notes that you are not requesting the report that was disclosed but “the original report which for whatever reason, whether it was his attorney, the prosecutor, or the Judge—was not felt to be admissible.” Mr. in den Bosch further asserts that for the preliminary language in § 84-712.05 to apply, “the document has to actually be publicly disclosed. That does not appear to be the case since [you have] the appellate record for the matter in [your] possession.” Finally, Mr. in den Bosch informs us that Lt. Bonacci provided you all related policies responsive to item no. 2 of your request.

DISCUSSION

We assume you are again asserting that the purported discussion or “disclosure” of records at your and others’ criminal trials precludes the OPD from relying on the exception in § 84-712.05 to withhold records. In our disposition to you dated October 20, 2025, we rejected your claim that certain records were disclosed in open court based on certain officers’ testimony at your criminal trial, stating:

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 the actual NCJIS searches were offered and received into evidence. 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.”).

File No 20251115, *Public Records Matter Involving the Omaha Police Department* (October 20, 2025) at 2-3. Your claims are no different here. Testifying in court about a policy does not equate to the disclosure of the actual record. The fact that a redacted version of the data extraction report was offered and received (which you apparently already have), does not require the OPD to provide you an unredacted copy. You provided no evidence showing that the OPD’s ShotSpotter policy or an unredacted report were offered and received at trial. And even if they were, there is a question as to whether the qualifying language in § 84-712.05 would apply to OPD since it did not disclose the records. Accordingly, the OPD may rely on § 84-712.05(5) to withhold these documents. As to the propriety of OPD withholding law enforcement records under § 84-712.05(5), please see our October 20, 2025, disposition.

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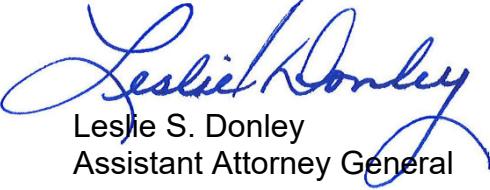
CONCLUSION

You have not established that the records you seek from OPD were in fact disclosed in open court. Consequently, OPD may continue to withhold its ShotSpotter policy and data extraction report 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.

If you disagree with our conclusion, you may wish to consider the other remedies available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General


Leslie S. Donley

Assistant Attorney General

c: Bernard J. in den Bosch

49-4045-31