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MIKE HILGERS
ATTORNEY GENERAL

RYAN D. BAKER
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January 20, 2026

Via email: [REDACTED]
Juston Simeon
[REDACTED]
[REDACTED]

RE: *Public Records Matter Involving the Wayne Police Department*
Our File No. 20261001

Dear Mr. Simeon:

This letter is in response to your petition received by this office on January 2, 2026, in which you sought our review of your public records requests submitted to the Wayne Police Department ("WPD") on December 29, 2025, seeking body camera, dash camera, and audio recordings relating to two separate encounters with WPD officers. 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 communication with WPD Chief of Police Marlen Chinn. On December 29, 2025, you submitted a request to the WPD for "all body-worn camera (BWC) footage, dashcam footage, and audio recordings relating to two specific interactions" involving WPD officers, you, and another individual on October 4, 2025. You submitted a second request to WPD that same day requesting "all body-worn camera (BWC) and related audio/video recordings associated with the execution of a search warrant" at your residence on December 8, 2025. On December 31, 2025, Chief Chinn issued the WPD's response via email, stating:

This email will serve as response to all five emails and both requests (for Oct 5, 2025, & Dec 8, 2025) sent to me and my department on 12-29-25 from two

different email addresses, along with the certified letter received by USPS today and the hand delivered letter received today.

After review of your requests by our city-county attorney I was advised that pursuant to Neb. Rev. Stat. 84-712.05(5) and (6), these records are exempt from the Nebraska Public Records Request at this time.

The undersigned contacted Chief Chinn on January 12, 2026, for additional information regarding your petition. Chief Chinn first advised that WPD “does not utilize body worn cameras and never has,” and “[i]n-car video systems with officer worn body mics” have been WPD’s sole method for recording police interactions with the public. Chief Chinn further stated that WPD officers contacted you at your residence on October 4, 2025, following WPD’s receipt of a missing person report from the Omaha Police Department on October 3, 2025. Chief Chinn further stated that on December 8, 2025, a search warrant was obtained and served on your residence by WPD officers in connection with other information received by the WPD.

DISCUSSION

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). Based on this broad definition, there is no question that the requested audio recordings are public records as contemplated by the NPRS.

However, while the NPRS broadly authorize 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 particular 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) (“*Evertson*”). Consequently, it is the WPD’s burden 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

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years and has consistently determined that law enforcement agencies may withhold records developed or received by those agencies in the course of an investigation.¹ These determinations have included recordings of law enforcement encounters.² Our conclusions in these dispositions have been based on both the plain text of the statute and the holdings of the Nebraska Supreme Court, which has stated:

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.

¹ See, e.g., *File No. 2025-1115; Omaha Police Department; Malik Stelly, Petitioner* (October 20, 2025); *File No. 2025-1063; Nebraska State Patrol; Kenneth Barrentine, Petitioner* (May 21, 2025); *File No. 2025-1060; Nebraska State Patrol; Tukrong Klengdong, Petitioner* (May 14, 2025); *File No. 2024-1218; Nebraska State Patrol; Julianne Sanner, Petitioner* (November 21, 2024); *File No. 2024-1145; Omaha Police Department; Michael McLemore, Petitioner* (August 7, 2024); *File No. 23-R-124; City of Fremont/Police Department; Jeff Forward, The Fremont Tribune, Petitioner* (July 10, 2023); and *File No. 22-R-136; Douglas County Sheriff; Kathleen Foster, Petitioner* (July 29, 2022). Copies of our disposition letters relating to these files and others may be found at <https://ago.nebraska.gov/disposition-letters>.

² See, e.g., *File No. 2025-1135; Nebraska State Patrol; Jason Thomas, Petitioner* (November 11, 2025); *File No. 2025-1122; Kimball Police Department; Alberto Mena, Petitioner* (October 29, 2025); and *File No. 2025-1009; Nebraska State Patrol; Jason Schwarting, Petitioner* (February 10, 2025).

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

There is no question that the WPD is a law enforcement agency charged with duties of investigation of persons, institutions, and businesses. See Neb. Rev. Stat. § 16-225 (2022) (authorizing formation of police department by cities of the first class). As discussed above, Chief Chinn indicated that the encounters on October 4 and December 8, 2025, occurred following WPD's receipt of a missing person report and WPD's execution of a search warrant for your residence. The requested recordings were therefore developed in connection with WPD's duty of investigation and examination of persons, institutions, and businesses, and they constitute investigatory records that may be withheld pursuant to § 84-712.05(5). With respect to your assertions regarding the status of investigations, we have previously determined that the status of an investigation is immaterial on whether public bodies may withhold investigative records, and we see no cause to depart from our prior dispositions.³ Because the WPD had sufficient basis to withhold the requested records under § 84-712.05(5), it is unnecessary to discuss the applicability of the exception at § 84-712.05(6).

As a final matter, we note that the WPD's denial of your requests did not contain all information required by the NPRS. Pursuant to § 84-712.04(1), when a public body denies a records request, it must provide the requester with 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 84-712.05 relied on as authority for the denial;
- (b) The name of the public official or employee 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.

(Emphasis supplied.) We will remind the WPD, by providing Chief Chinn with a copy of this disposition letter, that a denial of a records request under the NPRS must contain all information required by § 84-712.04(1).

³ See, e.g., File No. 2025-1159; Gering Police Department; Lindsey Anetsberger, Petitioner (December 29, 2025).

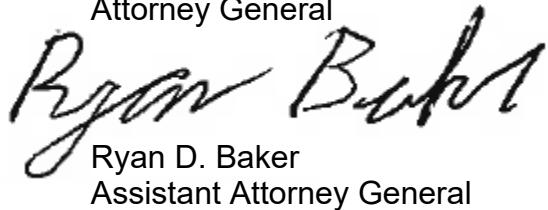
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CONCLUSION

For the reasons set forth above, we conclude that the WPD did not unlawfully deny you access to the requested public records. As a result, no further action by this office is warranted, and we are closing this file. If you disagree with our findings set out in this letter, you may wish to consult with an attorney to determine what, if any, additional remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Ryan D. Baker
Assistant Attorney General

c: Chief Marlen Chinn (via email only)

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