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April 20, 2026

Via email: [REDACTED]
Curt Safranek

RE: *Public Records Matter Involving the Nebraska Department of Health and Human Services*
Our File No. 20261026

Dear Mr. Safranek:

This letter is in response to your petition received by this office on March 17, 2026, in which you sought our review of your public records request submitted on February 4, 2026, to the Nebraska Department of Health and Human Services (“DHHS”) regarding records relating to its “Objective Assessment Process.” We delayed this matter to give DHHS additional time to consider new information pertaining to your request and to allow this office to fully finalize our response. We considered 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 DHHS attorney Thomas Skutt. On February 4, 2026, you submitted a public records request to the Governor’s Office seeking:

- Complete documentation of the logic and supporting materials and instruments used throughout the OAP—such as decision trees, flowcharts, spreadsheets, data, pseudocode, tables, mappings, translations, instructions, algorithms, functional requirements specifications, technical requirements specifications, determination guides, department guidance documents, standard operating procedures, trigger

specifications and rules, tiering logic, scoring guides, schema, rubrics, scales and algorithms, case mix system procedures, instructions, algorithms, requirements, and specifications—used for HCBS determinations based all or in part on the InterRAI ID assessment as well as any related process, procedure, instrument, calculation, or algorithm (e.g., level of care algorithm), including those that determine an individual’s case mix group, case mix index, and level of care determination.

- Any training materials, manuals, policies, procedures, guidelines, and practices the department and any of its contractors follow for using the InterRAI ID assessment responses in the course and context of the OAP and HCBS determinations.

This request was subsequently forwarded to and received by DHHS on February 6, 2026.

DHHS responded to your request on February 9, 2026, stating that your request would be “forwarded to the relevant Division(s) for processing.” In a subsequent email dated February 12, 2026, it provided a time/cost estimate and informed you that it expected it would be “unable to provide a response until April 17, 2026.”

On March 11, 2026, DHHS provided a follow-up response to your records request and produced records responsive to your request while others were withheld. These records included the slide deck titled “DD InterRAI Reviews,”¹ which had four pages redacted as “Proprietary/Confid.” DHHS further stated in its response:

Please note that some records were withheld as allowed by Neb. Rev. Stat. § 84-712.05(3). The information in question is considered proprietary or commercial information. “Trade 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.” Neb. Rev. Stat. § 84-712.05(3).

Social Security numbers were redacted as allowed by Neb. Rev. Stat. § 84-712.05(2) and Neb. Rev. Stat. § 38-123(2)(d). “The record is a public record, except that social security numbers shall not be public information....”

The following has been withheld: (1) all records or data of recipients of public assistance under Neb. Rev. Stat. § 69-313. In order to maintain compliance with Neb. Rev. Stat. § 68-313, the agency utilizes HIPAA de-identification principles. Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1230d-6, et seq. 45 CFR § 400.27; 45 CFR § 164.502 (general prohibition); 45 CFR § 164.514(b). Providing Personally Identifiable Information (PII) would result in the

¹ A copy of the slide deck was attached to your petition.

identification of individuals receiving services from the State of Nebraska and is respectfully withheld.

DHHS's response did not identify the records that were withheld.

On March 17, 2026, you submitted your petition to our office contesting DHHS's response to your public records request. You first stated that you were not challenging the "redactions or withholdings of HIPAA and/or personally identifiable information." Rather, you challenged:

- (1) DHHS's full-page redaction of the four pages in the slide deck;
- (2) "The outright withholding and complete failure of DHHS to produce responsive records (known to exist) per the request, pertaining to DHHS's Objective Assessment Process (OPA) [*sic*], without explanation and description"

You further indicated that DHHS "has previously provided this information for a different version of the same instrument brought forth by DHHS pertaining to its other waivers"

According to Mr. Skutt, the Department initially produced approximately 22 records and withheld the following eight records on the basis that they constituted proprietary and confidential records pursuant to § 84-712.05(3):

1. CMI_Tier_Chart
2. interRAI_CDD_and_Continuous_Residential_Recommendations_Pseudocode_10.27.2025.txt
3. NE_ICF_Output_Threshold_Crosswalk.CONFIDENTIAL
4. SUITE9_CASEMIX_CMGDDA_G1_V1.1_P_2021-09-30
5. SUITE9_SCALE_CMGDD-CY_G1_V1.1_P_2021-11-16_R
6. Supervisor_Review_ChYMH
7. Supervisor_Review_ChYMH-A
8. Supervisor_Review_IDI

After further review, Mr. Skutt informed the undersigned that the four redacted pages of the slide deck were improperly withheld. Mr. Skutt further stated that DHHS would also produce the records constituting items 1, 2, 3, 6, 7, and 8 in the list above, and we understand that DHHS provided these records to you on April 17, 2026. Per Mr. Skutt, DHHS will continue to withhold the records constituting items 4 and 5 (the "SUITE9 Documents") under § 84-712.05(3).

DISCUSSION

1. The SUITE9 Documents

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).

Turning to the SUITE9 Documents, DHHS maintains that these documents may be withheld under the exception found at § 84-712.05(3) permitting the withholding of “proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose.” Per our review of these records, we believe the SUITE9 documents do not fall within the definition of public records because they are not “of or belonging to” DHHS as prescribed in § 84-712.01(1).

Because this matter involves a private entity, we must consider the specifics of the relationship between DHHS and InterRAI. It is true that DHHS has access to the SUITE9 Documents. However, we do not believe that mere access is sufficient to show that the records are “of or belonging to” DHHS. Key to this matter is that the InterRAI products and software are merely licensed to DHHS for its use, and InterRAI retains all rights to the products’ underlying software and materials. Moreover, the creation of these documents was not the result of any action by DHHS. Given the circumstances in this case, we do not believe the SUITE9 Documents constitute public records subject to the disclosure requirements of the NPRS, as DHHS’s rights to the SUITE9 Documents are strictly limited by its license agreement with InterRAI. These limitations result in the SUITE9 Documents not being “of or belonging to” DHHS. Given this conclusion, we need not address whether the exception in § 84-712.05(3) permits DHHS to withhold the SUITE9 Documents as proprietary or commercial records.

2. DHHS’s Initial Response to Your Public Records Request

As a final matter, we note that DHHS’s partial denial of your records request did not contain all of the information required by the NPRS when a public body denies a

records request from the public. Pursuant to § 84-712.04(1), a public body denying a records request must provide the following information to the requester:

- (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.

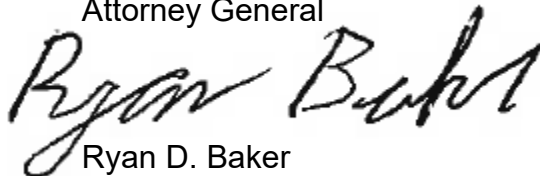
We will remind DHHS, by sending a copy of this letter to Mr. Skutt, that a denial of a records request under the NPRS must contain all information required by § 84-712.04(1).

CONCLUSION

For the reasons set forth above, we conclude that DHHS is not required to produce the SUITE9 Documents because they are not records “of or belonging to” DHHS within the meaning of the NPRS. Consequently, we find no violation of the NPRS, and we are closing this file. If you disagree with our findings contained in this letter, you may wish to consult with a private attorney to determine what, if any, other remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Ryan D. Baker
Assistant Attorney General

c: Thomas Skutt, Jr. (via email only)