



STATE OF NEBRASKA  
**Office of the Attorney General**

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May 20, 2026

Via email at [REDACTED]  
Jennifer Synowiecki

RE: *Public Record Matter Involving the Douglas County Election Commission*  
Our File No. 20261038

Dear Ms. Synowiecki:

This letter is in response to your public records petition received by this office on May 5, 2026. You asked us to review the Douglas County Election Commission's (Commission) denial of your March 14, 2026, public records request in which you sought records related to the decision to disqualify Mark Martinez from the Douglas County Sheriff election. We considered your petition, its attached documents, public court filings, and the information we received from Deputy Douglas County Attorney Timothy M. Coffey in accordance with the Nebraska Public Record Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024). We have completed our review, and our conclusions are detailed below.

### **RELEVANT FACTS**

On March 14, 2026, you submitted a public records request to the Commission seeking email communications between January 10, 2026, and March 14, 2026, with Election Commissioner Danielle Jensen, regarding the decision to disqualify Mark Martinez from the Douglas County Sheriff election, that include the following terms: Mark Martinez, Jim Pillen, Don Kleine, Active License, Aaron Hanson, and Diploma. On March 20, 2026, Deputy County Attorney William Rooney III responded to your request on the Commission's behalf, stating that additional time was needed to provide a response.

On April 30, 2026, Mr. Coffey responded to your request, indicating that "[r]ecords related to your request ha[d] been located...." However, he informed you that your request

was denied because “the responsive records are confidential pursuant to Neb. Rev. Stat. § 84-712.05(4).” The letter then cited Neb. Rev. Stat. § 84-712.05(4) in full as the specific reason for the denial.

In your petition to our office, you challenge the Commission’s denial. You assert that it cannot withhold records related to preparation for litigation because the litigation in question ended when the Nebraska Supreme Court issued an opinion on March 18, 2026.<sup>1</sup> Further, you claim the requested records were not relevant to the litigation. Finally, you allege that the Commission failed to comply with Neb. Rev. Stat. § 84-712.04(1)(a) because it only provided “extremely general information” and did not reference specific portions of the responsive records to specific statutes and reasons for the denial.

## DISCUSSION

### I. *Withholding Records Under Neb. Rev. Stat. § 84-712.05(4)*

After reviewing your petition, our office contacted the Douglas County Attorney’s Office (DCAO) regarding the April 30, 2026, response. At that time, Mr. Coffey supplemented the letter and provided us with a sufficient description of the contents of the withheld records. He explained that the only responsive records identified from your public records request were email communications between Election Commissioner Danielle Jensen and attorneys in the DCAO made for the purpose of seeking and receiving legal advice in connection with the decision to disqualify Mark Martinez from the election. With this description, we analyze whether the records may be withheld from public inspection.

Neb. Rev. Stat. § 84-712 sets out the basic rule for access to public records in Nebraska. That statute provides, in pertinent part:

Except as otherwise expressly provided by statute, all residents of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

Public records “include all records and documents, regardless of physical form, of or

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<sup>1</sup> See *Martinez v. Jensen*, 320 Neb. 996, 32 N.W.3d 251 (2026) [“*Martinez*”].

belonging to this state [or] any county” “[e]xcept when any other statute expressly provides that particular information or records shall not be made public...” Neb. Rev. Stat. § 84-712.01(1). In Nebraska, access to public records is broad, but not absolute. Neb. Rev. Stat. § 84-712.05 currently contains twenty-nine categories of records that may be withheld at the discretion of the records custodian. The burden of showing that a statutory exception applies to the disclosure of records rests upon the custodian of the records. *State ex rel. BH Media Grp., Inc. v. Frakes*, 305 Neb. 780, 788, 943 N.W.2d 231, 240 (2020); *Aksamit Res. Mgmt. LLC v. Neb. Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

In this case, the Commission relied on § 84-712.05(4) to withhold responsive records. This exception allows a public body to lawfully withhold “[r]ecords which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body *or which are confidential communications as defined in section 27-503.*” (Emphasis added.) Neb. Rev. Stat. § 27-503 defines confidential communications as those “not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.”

However, you assert the Supreme Court of Nebraska resolved the litigation related to your request on March 18, 2026. Further, you state that the requested records are not relevant to that case as its decision was based on interpretations of election law. As such, you argue that the Commission’s reliance on § 84-712.05(4) is overbroad.

According to the *Martinez* decision, Mark Martinez requested that his name be placed on the ballot for the office of Douglas County Sheriff. The Douglas County Republican Party subsequently filed an objection to Martinez’s candidacy along with a memorandum containing a legal analysis interpreting election law. The day before your public records request, Election Commissioner Jensen published a determination “that Martinez ‘d[id] not meet the candidacy requirements for Douglas County Sheriff.” *Martinez*, 320 Neb. at 999, 32 N.W.3d at 254 (alteration in original).

“Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” *Aksamit Res. Mgmt. LLC*, 299 Neb. at 123, 907 N.W.2d at 308. Emails with Election Commissioner Jensen made for the purpose of seeking and receiving legal advice in connection with an election law determination fall squarely within the § 27-503 definition of confidential communications. The emails were in furtherance of the rendition of legal advice and not intended for disclosure to third persons. Further, Neb. Rev. Stat. § 27-503 contains no temporal limitation tied to the duration of litigation. Communications remain confidential under the statute even after litigation is resolved. Accordingly, the records may lawfully be withheld from public inspection under § 84-712.05(4). And since the emails remain confidential communications under § 27-503, the

Commission may continue to withhold them under § 84-712.05(4).

II. *Violation of Neb. Rev. Stat. § 84-712.04(1)(a)*

Neb. Rev. Stat. § 84-712.04(1) provides in relevant part:

Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least 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....*

(Emphasis added.)

The Commission's denial letter stated, "[r]ecords related to your request have been located; however, the responsive records are confidential pursuant to Neb. Rev. Stat. § 84-712.05(4)." In communications with our office, Mr. Coffey asserted this letter did contain a description of the contents of the records withheld. Specifically, he claimed the responsive records were described as "confidential pursuant to Neb. Rev. Stat. § 84-712.05(4)." This description is insufficient. It fails to explain the contents of the records or adequately detail why the records are confidential under § 84-712.05(4).

The Commission's April 30 letter met the remaining requirements of Neb. Rev. Stat. § 84-712.04(1)(a). The Commission's assertion that the records are confidential stated the specific reason for the denial. Further, the letter included specific citations to Neb. Rev. Stat. § 84-712.05(4) and contained a checklist marking § 84-712.05(4) as the statute relied on for the denial. However, the Commission's denial letter failed to comply with Neb. Rev. Stat. § 84-712.04(1)(a) because it lacked a description of the contents of the records withheld.

## CONCLUSION

Upon review, we find that the Commission's reliance on Neb. Rev. Stat. § 84-712.05(4) as its basis to withhold emails made for the purpose of seeking and receiving legal advice was appropriate. We further find the Commission violated Neb. Rev. Stat. § 84-712.04(1)(a) by failing to provide you with a description of the contents of the records withheld. We will remind the Commission and the DCAO of the obligations outlined in Neb. Rev. Stat. § 84-712.04 and encourage them to revise their responses to comply with the statute. Since the requested records may be withheld from public inspection under the NPRS, no further action by this office is necessary, and we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with a private attorney to determine what additional remedies, if any, are available to you under these statutes.

Sincerely,

MIKE HILGERS  
Attorney General



Ben Kinnison  
Assistant Attorney General

c: Timothy M. Coffey (via email only)