



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

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**MIKE HILGERS**  
ATTORNEY GENERAL

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May 28, 2026

Via email: [REDACTED]

Patti Cordova  
[REDACTED]

RE: *Public Records Matter Involving Various Douglas County Departments*  
Our File No. 20261041

Dear Ms. Cordova:

This letter is in response to your petition received by this office on May 13, 2026, in which you sought our review of your public records requests submitted to Douglas County and various departments thereof seeking records and documentation relating to your resident subdivision. 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 Deputy County Attorney Tim Coffey. On April 20, 2026, you submitted a records request to the Douglas County Clerk's Office requesting "all public records related to [your] property," including "geotechnical engineering reports, soils reports, compaction testing, groundwater or hydrology studies, drainage studies, grading plans, stormwater management plans, subdivision engineering reports, and any documents referencing groundwater, springs, seepage, or soil suitability." Shemar Nutt responded on behalf of the Clerk's Office on April 23, 2026, and provided you with responsive documents, stating:

We have received information from the Douglas County Health Department, the Assessor/Register of Deeds Office, and the Douglas County GIS (Geographic Information Systems) Department.

The Health Department did not have any records for this property and suggested that the City of Bennington might have the information their department lacks. However, the Assessor/Register of Deeds Office provided the property records file, which is attached.

Additionally, the GIS (Geographic Information Systems) Department reported no responsive documents for this request.

The Douglas County Engineer's Office is still processing your request. If any responsive documents are available we will provide them to you as soon as possible.

Following Mr. Nutt's response, you sent a second email clarifying that your request "specifically include[d] all geotechnical, soils, groundwater, grading, and engineering reports submitted for the subdivision in which [your] property is located . . . ." Your email contained the following additional questions and requests:

1. Does Douglas County possess any geotechnical, soils, groundwater, or engineering reports for this subdivision, even if not tied to a specific address?
2. If the County does not possess these reports, please confirm whether the subdivision was approved without them.
3. If the County Engineer's Office is still "processing" the request, please provide the expected completion date, as required under the four business day rule in § 84[-]712.
4. If any responsive documents are being withheld, please provide the specific statutory exemption being applied.

You thereafter sent a subsequent records request on April 23, 2026, requesting "the complete subdivision approval file for the subdivision containing [your] property, . . . not limited to parcel-specific documents." This request further stated:

I am requesting all documents submitted, reviewed, created, or retained by Douglas County during the planning, engineering, permitting, and approval of the subdivision.

Please provide the following records, regardless of department:

A. Engineering & Geotechnical Documents

- Geotechnical engineer's report(s)
- Soil borings
- Groundwater/spring assessments
- Compaction tests
- Grading plans
- Drainage studies
- Hydrology/hydraulic reports

- Erosion control plans
  - Any engineering correspondence or memos
  - B. Subdivision Review & Approval Documents
    - Preliminary plat
    - Final plat
    - SID formation documents
    - Staff review comments
    - Conditions of approval
    - City/County Engineer review notes
    - Planning Department review notes
    - Any inter-agency communications
  - C. Inspection & Certification Records
    - Inspection logs
    - Inspection reports
    - Certificates of Occupancy
    - Any documentation showing who performed inspections and when
    - Any documents showing deviations from standard inspection procedures
  - D. Communications & Internal Records
    - Emails, memos, or correspondence between:
      - Douglas County Engineer
      - Douglas County Planning
      - City of Bennington
      - SID
      - Developer
      - Builder
      - Third-party engineers
    - Any documents referencing groundwater, springs, soil instability, or drainage concerns
  - E. Missing or Withheld Documents
- If any documents are withheld, please provide:
- The specific statutory exemption being applied
  - A description of the withheld document
  - The name of the person authorizing the withholding

On April 24, 2026, you were provided a "geotechnical report for 168<sup>th</sup> Street and Rainwood Road Improvements" from Jeffrey Scherzberg, on behalf of the Douglas County Engineer's Office.

In a letter dated April 29, 2026, Mr. Coffey responded to your April 23 public records request. Alongside the above-described timeline of correspondence, Mr. Coffey produced a "Petition for Declaration of Formation of Sanitary and Improvement District" identified as responsive to your request. Mr. Coffey advised:

To the extent that there are other records responsive to your request, the [Douglas County] Clerk's Office is not the custodian of those records. Should you choose to forward your request to other Douglas County Departments they may or may not be able to locate such records.

On April 30, 2026, you submitted a records request via email to the Douglas County Engineer's Office and Douglas County Environmental Services et al. also seeking records related to your subdivision. Specifically, you requested "all engineering, geotechnical, soils, groundwater, grading, drainage, hydrology, and subdivision-review documents submitted, reviewed, created, or retained by the Douglas County Engineer's Office" for your subdivision, including:

- A. Engineering & Geotechnical Records
  - Geotechnical reports
  - Soil borings
  - Groundwater/spring assessments
  - Compaction tests
  - Grading plans
  - Drainage studies
  - Hydrology/hydraulic reports
  - Erosion control plans
  - Engineering correspondence or memos
- B. Subdivision Review & Approval Records
  - Preliminary and final plats
  - Staff review notes
  - Conditions of approval
  - Inter-agency communications
  - SID engineering submissions
  - Any documents reviewed during subdivision approval
- C. Inspection & Certification Records
  - Inspection logs
  - Inspection reports
  - Certificates of Occupancy
  - Records identifying inspectors and inspection dates
  - Any deviations from standard inspection procedures

This request also included a request for written answers to several questions, including:

1. Does the County Engineer's Office possess any geotechnical, soils, groundwater, or engineering reports for this subdivision?

A direct yes or no is required.

2. If not, was the subdivision approved without these reports?

This is a factual question tied to the County's statutory obligations.

3. If records exist, what is the timeline for production as required under § 84-712(4)?

"Processing" is not a legally compliant response.

4. If any records are withheld, identify:

- The specific statutory exemption,
- The description of the withheld record, and
- The name of the person authorizing the withholding.

5. If any records were never created, destroyed, or transferred, please state so explicitly.

In a letter dated May 6, 2026, Mr. Coffey provided an additional response regarding your records requests. He first recounted that the Douglas County Clerk's Office "identified one responsive document to your previous request" and indicated that "the Engineer's Office separately sent you a response . . . which included the only responsive document it located in its records." Mr. Coffey further advised that "[t]he remainder of your request contained requests for records that if in existence, were not held by the Clerk's Office," and "[t]he Clerk's Office is not the custodian of such records and has no duty to search for those records." Mr. Coffey further stated that the Clerk's Office is not statutorily required to identify the potential custodians of records requested but believed that the Douglas County Engineer's Department and Douglas County Environmental Services may have responsive records. Mr. Coffey finally asserted that Douglas County is not statutorily required to respond to a requester's questions.

On May 22, 2026, the undersigned contacted Mr. Coffey regarding your petition. Mr. Coffey stated that Douglas County and its subsidiary departments referenced in your petition conducted searches and produced records responsive to your requests. Mr. Coffey maintained that neither Douglas County nor its departments have withheld any records responsive to your requests and that all records in the custody of Douglas County and its departments have been produced.

## DISCUSSION

Your petition to our office asserts that Douglas County is in violation of the NPRS based on the following:

1. Douglas County failed to “state clearly whether requested records exist, were never created, were destroyed, or are being withheld.”
2. Douglas County failed to “provide a specific timeline for production as required by § 84-712(4).”
3. Douglas County “refused to answer necessary clarifying questions to determine the existence and status of records.”
4. Douglas County failed to “identify the lawful custodian(s) for categories of records not held by the Clerk’s Office.”
5. Douglas County provided “[a] response that is labeled a ‘non-denial’ but functionally operates as a denial of access to records necessary to determine whether the subdivision was lawfully reviewed and approved.”

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. Pursuant to § 84-712.03(1)(b), our office is charged, upon petition from a requester, “to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with” the NPRS.

We have reviewed the correspondence and other materials provided to us, and it does not appear that Douglas County, or any of its departments, have withheld records responsive to your request. Per your petition and Mr. Coffey’s statements, Douglas County has produced all responsive records in its custody and in the custody of its subsidiary departments. Further, under Nebraska law, it is generally presumed that public bodies and officers carry out their duties in good faith. *See Wolf v. Grubbs*, 17 Neb. App. 292, 310, 759 N.W.2d 499, 518 (2009) (observing that, in a case involving the Open Meetings Act, “[i]n the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties”). Having reviewed this matter, we see no indication that Douglas County, its employees or officers, or Mr. Coffey have acted in bad faith in connection with your public records requests. We therefore do not have cause to believe that Douglas County has unlawfully withheld any public records responsive to your requests.

With respect to the remaining claims raised in your petition, there has been no violation of the NPRS. Our office has long maintained the position that in the absence of express statutory command, the NPRS do not require public bodies to review documents and create abstracts or other lists, to answer questions, or to create documents which do not otherwise exist. *See*, Op. Att’y Gen. No. 94092 (November 22, 1994); Op. Att’y Gen. No. 94035 (May 11, 1994); and Op. Att’y Gen. No. 87104 (October 27, 1987). Per the text of the NPRS, a requester is entitled only to make a request for specific documents or

records, and the custodian is required only to provide documents or records responsive to the records request, if they exist. The requester is not entitled to ask, nor is the custodian required to answer, any questions raised, including for the identification of another potential custodian of records that may be responsive to a records request.<sup>1</sup>

### CONCLUSION

For the reasons set forth above, we conclude that Douglas County and its subsidiary departments have fully complied with the requirements of the NPRS. 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: Tim Coffey (via email only)

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<sup>1</sup> See *Huff v. Brown*, 305 Neb. 648, 666, 941 N.W.2d 515, 527 (2020) (Pursuant to Neb. Rev. Stat. § 84-712, "[t]he public records statutes are directed to 'the custodian' of a requested public record . . . and the duties imposed thereunder on a specific custodian relate only to the public records of which that specific office or person is the custodian. A specific custodian only has a clear duty under the public records statutes to provide the public records of which he or she is custodian. It is the obligation of the person requesting a record to determine the proper custodian and to make a request of that person or office.").