



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

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May 27, 2026

Via email to [REDACTED]  
James P. Tatten, J.D.

RE: *Public Records Matter Involving the Omaha Police Department*  
Our File No. 20261043

Dear Mr. Tatten:

This letter is in response to your public records petition dated May 8, 2026, and received by our office on May 12. You have requested, among other things, that we determine whether the Omaha Police Department (OPD) complied with the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024), pertaining to your March 31, 2026, records request. The undersigned contacted Deputy City Attorney Bernard in den Bosch upon receipt of your petition and requested a response, which we received on May 21. We considered your petition and Mr. in den Bosch's response on behalf of the OPD in accordance with the NPRS. Our findings in this matter are set forth below.

Before we begin, we note that a significant portion of your petition involves a Litigation Hold and Demand for Preservation of Body-Worn Camera and Related Evidence, which you served on OPD Chief Schmaderer on September 16, 2025 (by hand delivery) and September 17, 2025 (by certified mail). You sent a follow-up demand on March 31, 2026, when you submitted your public records request. You state that as of the date of your petition, "OPD has not responded to either demand" nor "confirmed that the body-worn camera footage was preserved," among other concerns. Your request for relief asks this office to take certain actions pertaining to your demands, including, but not limited to, determining whether OPD preserved the body-cam footage at issue.

Mr. in den Bosch points out, and we agree, that a petition filed under the NPRS is not a proper vehicle to raise issues pertaining to your demands. However, for the sake of

completeness, he acknowledged that Chief Schmaderer received your initial demand and steps were taken to ensure that records would be preserved. Mr. in den Bosch states your “assertion that the [OPD] has ‘refused’ to acknowledge [your] demands is not supported by the evidence. The evidence merely suggests that it did not send an acknowledgement, something that is not required. The certified mail receipt confirmed that it was received.” You have now received confirmation that the OPD body-cam footage has been preserved. We will make no further comment or take any action with respect to the demands you submitted to the OPD, including the various items in your *Relief Requested*, since these matters fall outside of our enforcement authority in Neb. Rev. Stat. § 84-712.03(1)(b).

### RELEVANT FACTS

Your public records request sought records pertaining to an August 19, 2025, incident in which three OPD officers “responded to the east parking lot of [your apartment building], in connection with the nonconsensual tow and seizure of [your] rental vehicle and personal property . . . .”<sup>1</sup> The specific items in your request included:

1. The full names and identifying information of all officers present
2. Computer-Aided Dispatch (CAD) log and incident records
3. Body-worn camera footage
4. Dashcam footage
5. Incident and police reports
6. 911 call audio
7. Radio traffic and MDT/AVL records
8. Officer communications regarding the incident
9. Tow authorization and related records
10. OPD policies on private-lot tows, officer authority and body-worn camera retention.

On April 1, 2026, you received a response from Aubrey Mathews, a supervisor in the OPD Records Unit. Ms. Mathews indicated that a subpoena would be required to obtain most of the materials requested except for a public incident report, which she could not locate. She informed you that Douglas County 911 Communications would have the “call logs, transcripts, or recordings of calls.” Ms. Mathews further indicated you could submit a “FOIA request” through the City’s public records portal, and provided you a link to access it.

You state in your petition that the response you received “fails every requirement of § 84-712.04. It does not constitute lawful production, lawful denial, or lawful notice under § 84-712(4). OPD is in statutory default. More than thirty days have now passed

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<sup>1</sup> You state in your petition that you called 911 due to concerns for your personal safety when the tow truck driver drove his truck toward you in an aggressive manner.

since the statutory deadline expired. OPD has not produced any record, issued any further communication, or otherwise cured its default.”

You further argue that in the event OPD tries to assert the exception to disclosure in Neb. Rev. Stat. § 84-712.05(5) to withhold the body-cam footage, the exception does not apply. In this respect you claim that the elements in the two-part rationality test established in *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009) [“*Evertson*”], are not met. The test clarifies that

[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.

*Id.* at 14, 767 N.W.2d at 763. The *Evertson* court further held that “the investigatory exception does not apply to protect material compiled ancillary to an agency’s routine administrative functions or oversight activities.” *Id.* at 15, 767 N.W.2d at 763.

You argue that no police report was filed, no investigation initiated, no arrest made and no citation was issued. You state “[t]he officers performed a ministerial<sup>2</sup> standby during a private-lot civil tow and departed without generating a report.” You assert “a ministerial police presence at a civil tow . . . is precisely the type of routine function that *Evertson* excludes from the exemption’s protection.” You point out that under *Huff v. Brown*, 305 Neb. 648, 941 N.W.2d 515 (2020), and *Jacob v. Nebraska Board of Parole*, 313 Neb. 109, 982 N.W.2d 815 (2022), OPD has the burden to show, by clear and convincing evidence, that an exception applies. You assert that based “on these facts—no report, no investigation, no arrest, ministerial presence only—OPD cannot meet that burden.”

## OPD’S RESPONSE

As part of his response to this office, Mr. in den Bosch prepared a formal response to your records request and proposed that we provide it with our response. The letter is attached. As you will see, Mr. in den Bosch addresses each item in your request. As to the body-cam footage, Mr. in den Bosch states:

We have identified that Officers Payne, Curtis, and Smith have body camera footage of the incident which is being preserved. The body camera footage is withheld pursuant to NEB. REV. STAT. § 84-712.05(5) as a record developed by a

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<sup>2</sup> Ministerial is generally defined as “[o]f, relating to, or involving an act that involves obedience to instructions or laws instead of discretion, judgment, or skill; of, relating to, or involving a duty that is so plain in point of law and so clear in matter of fact that no element of discretion is left to the precise mode of its performance . . . .” Black’s Law Dictionary (12th ed. 2024), ministerial.

law enforcement agency charged with duties of investigation and the records constitute investigative, strategic and/or tactical information. In the opinion of the leadership of the Omaha Police Department, releasing any portion of the items specified in this paragraph would undermine its ability to provide public safety to the citizens and to their officers.

In his response to the office, Mr. in den Bosch informs us that OPD does not contest that the body-cam videos are “records’ within the terms of the [NPRS].” He states that OPD “has the power to arrest persons for violations of law and a corresponding duty to investigate persons’ conduct when enforcing the laws,” citing Neb. Rev. Stat. §§ 14-102(25) and 14-606 (2022), as well as Home Rule Charter § 3.11. As a result, OPD is a “law enforcement agency” as referenced in § 84-712.05(5).

Mr. in den Bosch states that your “request and petition seem to acknowledge that these records document a police response to a call for service and the subsequent investigation of that event” and that “[t]here should be no issue about whether the incident generated a law enforcement investigation of claims of potential criminal prosecution.” He states this is true even when citations are not issued. According to Mr. in den Bosch, the body-cam footage was developed by a law enforcement agency with duties of investigation of persons and the footage is part of the investigation.

Mr. in den Bosch acknowledges the exception does not apply to records compiled as part of an agency’s routine administrative functions. However, “when an inquiry by an agency focuses with special intensity on a particular party, an investigation is underway and within the investigatory records exception,” citing *State ex rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 792, 587 N.W.2d 100, 106-07 (1998). As a final point, Mr. in den Bosch informs us that the Nebraska Legislature has dictated the public policy with respect to the body-cam video and the amount of transparency required of police operations. The current policy, as reflected in Neb. Rev. Stat. § 84-712.05(5), is that “records compiled during a police investigation need not be available in the public domain.” Thus, it is the OPD’s position that your request for “body-worn camera footage” was properly denied under Neb. Rev. Stat. § 84-712.05(5).

## **DISCUSSION**

Public records in Nebraska “include all 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.” Neb. Rev. Stat. § 84-712.01(1) (2014). While access to public records is broad, it is not absolute. The NPRS allow access “[e]xcept as otherwise expressly provided by statute” (§ 84-712(1)) or “[e]xcept when any other statute expressly provides that particular information or records shall not be made public” (§ 84-712.01(1)). Consequently, you have no right to access

public records in those instances where the Legislature has made the records expressly confidential or subject to withholding under § 84-712.05.

Section 84-712.05(5) allows the following records to be withheld at the discretion of the public body unless publicly disclosed in an open court, administrative proceeding, or meeting or disclosed by a public entity pursuant to its duties:

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 . . . .<sup>3</sup>

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years. We have consistently determined that law enforcement agencies may withhold records developed or received by those agencies in the course of an investigation.<sup>4</sup> These determinations have included recordings of law enforcement encounters.<sup>5</sup> Our conclusions in these dispositions have been based on both the plain text of the statute and the rationality test referenced above.

With respect to the body-camera footage, there is no question that the OPD is a law enforcement agency charged with duties of investigation of persons, institutions, and businesses. OPD officers were dispatched to your apartment building in response to the 911 call you made seeking assistance. The body-camera recordings were developed in connection with the OPD officers' investigation into the matter and are part of the investigation. There is nothing in the plain language of the exception that requires, for the exception to apply, that the law enforcement agency create a report, make an arrest, or

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<sup>3</sup> There are two exceptions to the exception: (1) records relating to the presence of drugs or alcohol in any body fluid of an individual; and (2) records relating to the cause of death arising from or related to employment once an investigation is concluded when requested by a family member of the deceased.

<sup>4</sup> 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>.

<sup>5</sup> See, e.g., *File No. 2026-1020; Scottsbluff Police Department; James Edwards, Petitioner* (March 10, 2026); *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).

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issue a citation. Moreover, we disagree that the officers were there in some sort of “ministerial” capacity. As law enforcement officers, they were there in response to a call for service and their activity in this respect falls within the parameters of the exception.

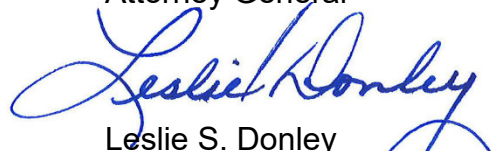
We will now briefly address OPD’s initial response to your public records request. Your request was addressed to the “Custodian of Records, Omaha Police Department—Records Division.” According to Mr. in den Bosch, the Records Division does not process public records requests *per se*. Rather, this division “handles thousands of requests for police reports, mug shots, police history information, and subpoenas each month.” And while the division may provide records to respond to a request, the division does not handle them. Mr. in den Bosch provided this information to explain the circumstances of the response you received, not as an excuse for failing to appropriately respond, which he fully acknowledged. Mr. in den Bosch further informed us that calls and meetings with OPD staff were conducted to discuss how to handle this type of request in the future and to discuss the NPRS and its obligations on staff. Finally, we have reviewed Mr. in den Bosch’s response to your public records request and, except for not meeting the statutory timeframe in Neb. Rev. Stat. § 84-712(4), find that it meets the requirements of the NPRS.

### CONCLUSION

There is no question OPD’s initial response to your public records request fell short. However, you have now been provided with a response that fully complies with the NPRS. We further conclude, consistent with multiple dispositions issued through the years, that the OPD may withhold the officers’ body-cam footage under the exception to disclosure in § 84-712.05(5). Since you have not been unlawfully denied access to public records, no further action by this office is necessary and we are closing our file. If you disagree with our analysis, you may wish to review and consider the other remedies available to you under the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General

  
Leslie S. Donley  
Assistant Attorney General

Enclosure

c: Bernard in den Bosch (via email only)  
49-4162-31