



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

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
FAX (402) 471-3297 or (402) 471-4725

**MIKE HILGERS**  
ATTORNEY GENERAL

**SHAIANNE Y. SUNAGAWA**  
ASSISTANT ATTORNEY GENERAL

May 29, 2026

Via email at [REDACTED]  
Sky Sellars, Records Coordinator  
Midwest Safety

RE: *Public Records Matter Involving the Nebraska State Patrol*  
Our File No. 20261047

Dear Mr. Sellars:

This letter is in response to your petition received by this office on May 14, 2026, in which you sought our assistance regarding your April 29, 2026, records request to the Nebraska State Patrol (NSP). We forwarded a copy of your petition to NSP's Legal Counsel, Mark Boyer, on May 20 and received his response later that day. We considered this matter under the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024). Our findings are set forth below.

### **RELEVANT FACTS**

According to your petition, on April 29, 2026, you submitted a public records request to the NSP seeking the following digital exhibits offered at trial in *U.S. v. John Francis*, Case No. 4:23-cr-03045 (D. Neb.):

- Exhibit 4 — Seward County Deputy Osborn dashboard camera recording
- Exhibit 5 — Seward County Deputy Osborn body-worn camera recording
- Exhibit 6 — NSP Trooper Sutton dashboard camera recording
- Exhibit 7 — NSP Trooper Sutton body-worn camera recording
- Exhibit 8 — Exterior photographs of the suspect vehicle (Chevrolet Tahoe)
- Exhibits 11 and 13 — Evidence photographs (firearm, magazine, ammunition, currency, MDMA)

On May 5, 2026, NSP attorney Michael Wehling denied your request citing Neb. Rev. Stat. § 84-712.05(5). Mr. Wehling further stated that the NSP is “not able to determine what was disclosed in a court case” and advised you “to contact the court for that information.”<sup>1</sup>

In his response to this office, Mr. Boyer explained that NSP had informed you, in its responses to two previous public records requests, that the NSP is not in possession of the records identified as Exhibits 4, 5, 8, 11, and 13. Mr. Boyer further explained that NSP is only in possession of the items identified as Exhibits 6 and 7, but NSP is asserting its right to withhold these investigative records under § 84-712.05(5).

You now challenge this decision and allege the records should not be withheld because (1) the investigation has concluded, (2) the records are in the public domain, (3) public access to criminal-trial records is constitutionally protected, and (4) “NSP’s redirect to ‘the court’ does not satisfy the statute.”

## DISCUSSION

The NPRS generally allow Nebraska residents and other interested persons 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. However, while the NPRS do provide access to public documents, they are not absolute. There is no right to access public records in those instances where the Legislature has made the records confidential or subject to withholding under Neb. Rev. Stat. § 84-712.05 or § 84-712.08.

Public records in Nebraska are defined as “all records and documents, regardless of physical form, *of or belonging to*” the governmental entities in the state. Neb. Rev. Stat. § 84-712.01(1) (2024) (emphasis added). As previously stated, Mr. Boyer has explained to you twice that NSP does not have the records identified as Exhibits 4, 5, 8, 11, and 13. The NPRS only require disclosure of records of which the agency is the custodian. The records identified as Exhibits 4, 5, 8, 11, and 13 are not records “of or belonging to” the NSP nor is the NSP the custodian of these records. Accordingly, these records are not at issue for the purposes of our analysis of whether NSP acted in accordance with the NPRS.

Neb. Rev. Stat. § 84-712.05 of the NPRS is comprised of twenty-nine categories of records that may be kept confidential from the public at the discretion of the agency involved so long as those records have not been “publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties . . . .” In the present case, NSP is relying on the exception in § 84-712.05(5).

---

<sup>1</sup> We note that you had previously attempted to request these records directly from the court on July 21, 2025. However, the court ultimately denied your request because the exhibits were no longer in the court’s possession. The court noted the exhibits had been transferred to the Eighth Circuit Court of Appeals.

This provision pertains to

[r]ecords 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>2</sup>

As to the propriety of NSP withholding the dashboard and body camera records (items 6 and 7), this office has consistently held, relying in large part on the plain language of the exception,<sup>3</sup> that law enforcement agencies may withhold records developed or received by those agencies in the course of an investigation.<sup>4</sup> We have no basis to conclude otherwise with respect to your request. There is no question NSP is a law enforcement agency charged with the duties of investigation. See Neb. Rev. Stat. §§ 81-2004 and 2005 (2024). According to Mr. Boyer, items 6 and 7 were developed by the NSP during its criminal investigation of Mr. Francis. Therefore, they fit squarely within the definition of investigatory records under § 84-712.05(5), and NSP's denial of your request was permissible under the NPRS.

We acknowledge your argument that the records should be disclosed because the investigation is now closed. However, § 84-712.05(5) does not differentiate between whether an investigation is ongoing or has been resolved. Therefore, the fact that the investigation is closed is not relevant to our analysis of NSP's right to withhold its investigatory records under § 84-712.05(5).

Lastly, your petition asserts that the requested records should be disclosed because they were shared in open court and shared with a jury. However, NSP did not prosecute Mr. Francis' case and was not the entity that introduced the requested records

---

<sup>2</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>3</sup> "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 Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

<sup>4</sup> See, e.g., *File No. 20251098, Public Records Matter Involving the Omaha Police Department [Williams]* (August 29, 2025); *File No. 20251031, Public Records Matter Involving the Omaha Police Department [Bradrick]* (March 17, 2025); *File No. 20241201, Public Records Matter Involving the Omaha Police Department [Brown]* (November 1, 2024); *File No. 20241200, Public Records Matter Involving the Lincoln County Sheriff's Office [Kohler]* (October 31, 2024); *File No. 20241176, Public Records Matter Involving the Lancaster County Sheriff [Kaluza]* (September 25, 2024). You may access the disposition letters for these files at <https://ago.nebraska.gov/disposition-letters>.

in open court. Consequently, we find the requested records may be withheld under § 84-712.05(5).


### CONCLUSION

For the reasons set forth above, we conclude that NSP did not unlawfully deny you access to public records. NSP may continue to withhold the responsive dashboard camera and body camera recordings under Neb. Rev. Stat. § 84-712.05(5). Since we have identified no violations of the NPRS, no further action by this office is warranted, and we are closing this file.

If you disagree with our conclusion, you may wish to discuss this matter with your private attorney to determine what other remedies are available to you under the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General

  
Shaienne Y. Sunagawa  
Assistant Attorney General

c: Mark Boyer (via email only)

18-006