



STATE OF NEBRASKA  
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July 16, 2026

Via email at [REDACTED]  
Logan Pratt, [REDACTED]  
[REDACTED]

RE: *Public Record Matter Involving the Department of Health and Human Services*  
Our File No. 20261060

Dear Mr. Pratt:

This letter is in response to your public records petition received by this office on July 1, 2026, in which you challenge the handling of your April 30, 2026, public records request by the Department of Health and Human Services (DHHS). We forwarded your petition to DHHS attorney Thomas Skutt, Jr. on July 7, and discussed the matter with him later that day. On July 15, Mr. Skutt provided the undersigned an update on the status of your request. We considered your petition and the information we received from Mr. Skutt in accordance with the provisions of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024). Our findings and conclusion in this matter are set out below.

**BACKGROUND**

On April 30, 2026, you submitted a public records request to Drew Gonshorowski, director of the DHHS Division of Medicaid and Long-Term Care (MLTC), requesting the following:

1. All network adequacy reports, assessments, or analyses submitted by Heritage Health managed care organizations (MCOs), including UnitedHealthcare Community Plan of Nebraska, Nebraska Total Care and

- Molina, to MLTC or the Nebraska Department of Insurance, for the most recently completed reporting period.
2. Time-and-distance and/or appointment availability standards currently applicable to ABA therapy and autism specialty services under the Nebraska Heritage Health program, including any applicable access standards established by contract or regulation.
  3. Any network adequacy compliance determinations, findings, or corrective action plans issued by MLTC or its agents related to behavioral health, ABA, or autism specialty services for any Heritage Health MCO.
  4. Provider-to-enrollee ratio data or gap analyses for ABA and autism specialty services by county or region, including any assessments of whether current in-network provider capacity is sufficient to meet member demand.
  5. Any correspondence, memoranda, or reports between MLTC and Heritage Health MCOs regarding network gaps, provider shortages, or access issues specific to ABA, autism, or pediatric behavioral health services.
  6. The current executed contracts (or relevant network adequacy provisions thereof) between MLTC and each Heritage Health MCO, to the extent not exempt from disclosure.

DHHS, through its online records portal, acknowledged receipt of your request on May 1. On May 4, you received an email informing you that the agency was working on your request but “[d]ue to the workload demands on agency personnel,” would not be able to respond until June 16. The email further informed you, among other things, that (1) DHHS would respond sooner if possible, (2) to contact the office directly “[s]hould you desire to modify or prioritize your request,” and (3) there was no cost associated with your request. On June 26, DHHS sent you an email almost identical to the May 4 email, which extended the delay to July 27. You have received no further response or records from DHHS to date.

## **YOUR PETITION**

You allege in your petition that DHHS failed to comply with the NPRS on three grounds, which we have summarized below:

1. DHHS failed to meet the procedural standards in Neb. Rev. Stat. § 84-712(4) by asserting the delay in producing public records was due to “workload demands on agency personnel.” You assert this statutory provision only allows delays when “due to the significant difficulty or the extensiveness of the request.” You state that “DHHS did not assert that this request is extensive or difficult, and it should be held to the justification it actually gave.”
2. You claim that records responsive to numbers 1-4 and 6 of your request are “defined records that DHHS collects from, or maintains under, its MCO contracts” and there is “[n]othing in the record to suggest[ ] these are difficult

to locate or voluminous, and DHHS has offered no reason it could not produce them promptly.” You state that you have always been willing to have any category of record that requires additional time “sequenced.” However, a delay as to one category does not justify delaying the remaining categories.

3. You claim that DHHS’s “serial extension” to July 27 is inconsistent with § 84-712(4)(c), which “contemplates” the record custodian to provide “a single, good-faith representation of ‘the earliest practicable date.’” You further claim the original estimate was not “made in good faith and is contrary to the [NPRS’s] command to produce records ‘without delay.’” You assert that allowing “open-ended serial extensions would let an agency defer disclosure indefinitely while remaining nominally compliant.”

You requested this office to find DHHS in violation of the NPRS and order the agency to produce the requested records immediately. You have also offered to accept records responsive to numbers 1-4 and 6 immediately and receive records pertaining to number 5 on a “rolling basis” “[t]o demonstrate good faith and to remove any colorable basis for further delay . . . .”

### **DHHS’s RESPONSE**

According to Mr. Skutt, the process to produce records in response to your request involves a multi-division effort. MLTC staff compiled the information and data they believed were responsive to your request and provided it to the Public Records Division (PRD). The PRD then distributed the information and data to other internal entities responsible for ensuring that confidential information is not inadvertently disclosed. This review process involves compliance with “other statutes,” e.g., HIPAA. Mr. Skutt provided a timeline detailing personnel and events to support the agency’s efforts to date.

In response to your assertion that “discrete records” could have been produced immediately, Mr. Skutt states that the agency considers “discrete records” “to be those records which are able to be segregated as part from an existing record,” and that DHHS “has always provided discrete records when possible under the [NPRS].” However, agency records—discrete or otherwise—are subject to the “other statute” review and may not be releasable. Mr. Skutt states that at this point, the agency cannot say with certainty what records will be released/withheld.

Finally, Mr. Skutt refutes your claim that the agency is only entitled to one good faith estimate as to when the records will be made available. He states that the original estimate was based on the experience of agency staff and that compliance with the requirements in § 84-712(4)(c) was met. However, June 16 was only an estimate, not a guarantee, and there is nothing in the statutory provision that precludes the agency from extending the date in order to provide a final response. He states that the agency’s

“reviews are thoughtful and fluid” and that many variables impact the estimates for records production, as is the case here.

## RELEVANT LAW

Neb. Rev. Stat. § 84-712(4) outlines the process to access public records and provides in part as follows:

Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request. The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request. If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request.

Neb. Rev. Stat. § 84-712 (2024) (emphasis added).

## DISCUSSION

Before we begin, it is important to note that you have not been denied public records, and that your public records request with DHHS is *pending*. And, by all accounts, you will be receiving responsive records sometime in the next ten days. With that understanding, we considered your arguments that DHHS violated the NPRS by extending its original estimate of June 16 to July 27. For the reasons stated below, we find that the extension does not constitute a violation.

Prior to 2000, there was no express right under the NPRS to obtain copies of public records. That changed with the passage of 2000 Neb. Laws LB 628, which added the process set out in § 84-712(4). As discussed above, when a delay to fulfill a records request is necessary “due to the significant difficulty or the extensiveness of the request,” the explanation of delay must include “the earliest practicable date for fulfilling the request,” along with an estimate of costs, “and an opportunity for the requester to modify or prioritize the items within the request.” Without question, those three items must be

included in the written delay. However, we find nothing in this language that requires the records custodian to affirmatively discuss in writing the “significant difficulty” or “extensiveness” of the request, thus validating the necessity for the delay.

This office has previously considered whether certain delays exercised by record custodians were appropriate under § 84-712(4). In discussing the legislative history of LB 628 in *File No. 22-R-121; Secretary of State; Susan Bliss, Petitioner*, May 23, 2022 [*Bliss*], we stated:

In the case of a voluminous records request, the legislative history of LB 628 makes it clear that the custodian of the records may take whatever time is needed under the circumstances to prepare copies of the records at issue. As stated by Senator Bruning, one of the co-sponsors of LB 628:

Also in [§ 84-712(4)], there is the phrase ‘if the entire request cannot with reasonable good faith efforts be fulfilled within three business days’ then the written explanation needs to be provided along with the earliest practicable date. My intention, as one of the cosponsors, as well, and for the legislative record is to mean that that amount of time again may be a very long time, meaning months or more. And the reason I say this, the reason I think it’s important to establish a legislative record is just recently one of our state agencies received a request from a law firm that asks for any and all records in the custody of that state agency relating to issues of a lawsuit. Any and all records can be a huge request, and my intent in creating this legislative record is to make sure our state agencies are protected; that they can take as much time as necessary and without having to hire additional staff, without having to buy additional copy machines, without having to pay people for overtime to provide those records. It’s my understanding and my intent that it could take an extremely long time if the requester is to ask for any and all records relating to such-and-such.

Floor Debate on LB 628, 96th Neb. Leg., 2nd Sess. 11212-11213 (March 22, 2000) (Statement of Sen. Bruning). In this respect, Senator Brashear, the bill’s other co-sponsor, stated:

Yes, I certainly concur in Senator Bruning’s characterization and I would seek to explain the reasoning because I think it’s the balance that has been built into the bill by all of the people who have participated and have made it a better bill by their participation. . . . By contemplating that the public record will be the public record and it will always be available to the public, but by saying that the production of the public record or the copies of the public record has to be in a reasonable and orderly way, you get the time that you need in order to do it, as the custodian of the record is then constituted, meaning in terms of facilities, in terms of equipment, in terms of personnel,

that they are not going to abandon all of their other public works in order to accommodate this request, and that the custodian, under the provisions of this bill, can have that adequate time to respond, we give the custodian of the public record leverage, as I call it.

*Id.* at 11213-11214 (Statement of Sen. Brashear).

*Bliss* at 4-5.

While DHHS did not use the words “significant difficulty” or “extensiveness” in its May 4 email, it is apparent that, on its face, your request is broad and seeks extensive records. According to Mr. Skutt, fulfillment of your request required multiple program staff to compile the records, and other staff to conduct reviews to ensure that confidential information is not inadvertently disclosed. This appears to us to be the essence of significant difficulty and extensiveness. The legislative history discussed above makes it clear that public bodies must be given adequate time to respond to a request for public records, taking into account available facilities, equipment, and personnel. Moreover, the fact that DHHS has a dedicated Public Records Division suggests it processes a significant volume of requests. Consequently, your assertion that DHHS’s basis for delay—“workload demands on agency personnel”—is not a proper ground to delay fulfillment of your request is without merit.

We also find no merit to the other claims in your petition. While it is possible that records responsive to numbers 1-4 and 6 were in fact neither difficult to locate nor voluminous, those records are still subject to an internal review to ensure personal and confidential information is not released. There is also no requirement for any record custodian to produce records on a “rolling basis” and your offer to receive records in this manner does not relieve the agency from its legal obligation to safeguard confidential information, which we understand is currently being undertaken by agency staff.

We also find no basis to conclude that record custodians are limited to “a single good-faith representation of ‘the earliest practicable date.’” As Mr. Skutt correctly points out, the earliest practicable date is an *estimate*. And as we stated in *Bliss*, “[t]here is nothing that prohibits a public official from extending the date in those instances when the ‘earliest practicable date’ does not allow adequate time to produce the requested records.” *Bliss* at 5. It is also worth noting that DHHS extended the earliest practicable date only *one* time and moving the fulfillment date to July 27 does not constitute an “open-ended serial extension[ ] . . . .” Based on the information provided by Mr. Skutt, we are satisfied that the agency is acting in good faith to fulfill your records request. In any event, you should be receiving responsive records by July 27 and the delays that DHHS exercised in fulfilling your request are authorized by statute.

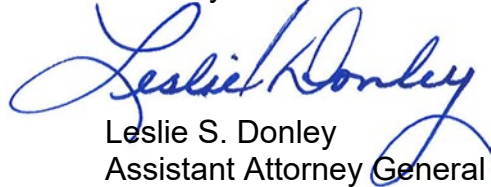
Finally, we will take this opportunity to comment on the June 26 notice you received concerning the second delay, which was ten days *after* the earliest practicable date set out in the May 4 email. We will remind Mr. Skutt and other DHHS officials that when it becomes necessary to extend the delay, notice of the extension should be communicated to the requester no later than the original fulfillment date.

### **CONCLUSION**

Since we have identified no violations of the NPRS by DHHS with respect to this matter, 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 your private attorney to determine what, if any, additional remedies might be available to you under Neb. Rev. Stat. § 84-712.03.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

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