



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

RYAN D. BAKER
ASSISTANT ATTORNEY GENERAL

August 25, 2026

Via email: [REDACTED]
Andy Harpenau
[REDACTED]

RE: *Public Records Matter Involving the Cass County Attorney's Office*
Our File No. 20261077

Dear Mr. Harpenau:

This letter is in response to your petition received by this office on August 10, 2026, in which you sought our review of your public records request dated May 12, 2026, submitted to the Cass County Attorney's Office seeking records relating to actions undertaken by Cass County in response to community claims of zoning ordinance violations. We reviewed your petition in accordance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024), as amended 2026 Neb. Laws LB 525 and LB 1096, 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 Cass County Attorney Christopher Perrone. In a letter dated May 12, 2026, you submitted a public records request to the Cass County Attorney's Office in which you sought records relating to allegations of zoning violations made by other Cass County residents.¹ Specifically, you requested the following records from the Cass County Attorney's Office:

¹ We note that your May 12 letter also responded to a letter from Mr. Perrone dated May 7, 2026, in which Mr. Perrone advised you of community complaints received by his office concerning potential zoning code violations. These complaints, the May 7 letter, and all portions of your correspondence with Mr. Perrone concerning these complaints have no bearing on our resolution of this matter. The NPRS "apply 'equally to all persons without regard to the purpose for which the information is sought.'" See *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020).

- All complaints, written or oral, relating to Black Elk Farms, Soil Dynamics, Hillside Solutions, and Polished Properties;
- All emails, text messages, internal communications and correspondence referencing these entities;
- All aerial imagery, photographs, drone footage, and surveillance materials relied upon;
- All inspection reports, notes, memoranda, and enforcement evaluations;
- All communications with neighboring landowners or third parties regarding these matters;
- All documents referencing or interpreting CUP #8920 in relation to these matters; and
- Any records relied upon or referenced in support of these assertions contained in your May 7, 2026, correspondence.

Per the “Certified Mail Receipt” included alongside your petition, this May 12 letter was addressed to the “Cass County Attorney,” delivered via certified mail, and signed for on an unknown date at an unlisted address. An enclosed United States Postal Service tracking printout indicates that your May 12 letter was “Delivered, In/At Mailbox” on May 16, 2026.

Mr. Perrone responded via letter dated May 22, 2026, in which he denied your records request “on behalf of the Cass County Sheriff.” Mr. Perrone advised that “written records and photographs responsive to your request were located” but such records would be withheld under Neb. Rev. Stat. § 84-712.05(5). In connection with this assertion of the investigative records exception, Mr. Perrone stated that formal investigations into activities occurring at several properties owned by the entities identified in your May 12 letter were underway, and “[a]ll such existing records and photographs are part of the ongoing formal investigations into alleged violations outlined” within the May 22 letter.

You responded to Mr. Perrone via letter dated May 28, 2026, in which you requested clarification regarding his denial of your records request. You stated your belief that your request

included numerous categories of records that may not fall within any investigative exemption, including but not limited to:

- Historical CUP interpretations;
- Preexisting communications;
- Administrative materials;
- Policies or practices relating to inspections;
- Communications concerning complaint procedures;
- Correspondence unrelated to investigative strategy;

- And records that may have existed prior to any claimed investigation.

You thereafter requested Mr. Perrone to “[i]dentify which categories of requested records are being withheld” and “the specific statutory basis relied upon for each withheld category”; “[c]larify whether the County contends all requested materials are investigatory in nature” and “whether any responsive records existed prior to initiation of any investigation”; and “[p]roduce all non-exempt responsive materials” and “any segregable non-investigatory portions of otherwise withheld records contemplated under Nebraska law.” No further correspondence with Mr. Perrone concerning your records request was included with your petition.

The undersigned contacted Mr. Perrone regarding your petition and underlying correspondence. He first stated that the Cass County Attorney’s Office “has no records responsive to [your] public records request . . . dated 5/12/26,” and the “written records and photographs” identified in the May 22 letter referenced “written records and photographs in the possession of” the Cass County Zoning Administrator and potentially the Cass County Sheriff’s Office. Mr. Perrone advised that his office has not received those records as of the present date. Mr. Perrone also could not identify the individual that received and signed for the certified mail package your request was delivered in.

DISCUSSION

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.

However, requests for public records must be directed at the proper custodian of the records sought. As the Nebraska Supreme Court observed:

The 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 the custodian.

See Huff v. Brown, 305 Neb. 648, 666, 941 N.W.2d 515, 527 (2020) (holding that the NPRS did not “impose a duty on the sheriff” to obtain records in the possession of other county agencies).

Your May 12 letter was directed to the Cass County Attorney’s Office. While we note Mr. Perrone’s May 22 letter described the existence of the requested records and

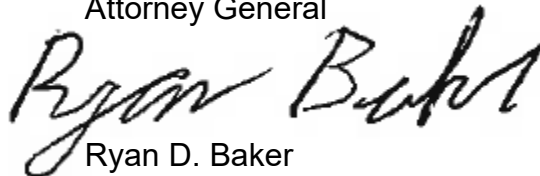
denied your records request "on behalf of the Cass County Sheriff," this appears to have been in reference to records in the possession of the Cass County Zoning and Planning Department and the Cass County Sheriff's Office, whom Mr. Perrone identified as custodians for the requested records. Given the backdrop of Nebraska case law and the information provided to our office, Mr. Perrone's May 22 letter should have stated that the Cass County Attorney did not possess records responsive to your request, as such records remained in the custody of other county departments and had not been provided to his office. However, Mr. Perrone further advised that he has directed you to submit your public records requests to the appropriate county departments. It is our understanding that you have submitted requests to the appropriate county departments and that they have responded and provided responsive records or are in the process of responding to your requests.

CONCLUSION

For the reasons set forth above, we conclude that the Cass County Attorney has not unlawfully withheld records responsive to your request, as he was not the custodian of such records. 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

A handwritten signature in black ink, appearing to read "Ryan Baker", written over the typed name of Ryan D. Baker.

Ryan D. Baker
Assistant Attorney General

c: Christopher Perrone (via email only)
Tom Brantley (via email only)