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Office of the Attorney General

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August 25, 2026

Via email at [REDACTED]
Bruce Vesper
[REDACTED]

RE: *Public Record Matter Involving the City of Tekamah*
Our File No. 20261078

Dear Mr. Vesper:

This letter is in response to your public records petition received by this office on August 10, 2026. You asked us to review the response by the City of Tekamah (City) to your public records request, in which you sought records related to a July 21 Facebook post promoting a hunter education program. We considered your petition, its attached documents, and other information provided by City Attorney Matthew Munderloh and Tekamah Police Chief Jeremy Goeken, 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. We have completed our review, and our findings are detailed below.

RELEVANT FACTS

On July 21, 2026, the Tekamah Police Department (Department) posted a Facebook message celebrating an education program that taught firearm safety and hunting ethics. The post indicated that outside instructors used the Department's meeting room for the youth-oriented hunting education class. It further encouraged the community to contact the Department for gun safety locks.

On July 28, 2026, you submitted a public records request to the City seeking records related to the Department's July 21 post. The request sought six categories of records, including:

- 1) The names of all hunter education class attendees and instructors;
- 2) Copies of each instructor's background and relevant certifications;
- 3) The class syllabus;
- 4) Information on each instructor's hunter safety class teaching experience;
- 5) Records on gun locks donated by the Department and handed out at the class, including the number of gun locks donated, the number handed out, and the cost of each lock to the Department; and
- 6) The number of times the Department hosted other related classes within the last three years.

On Wednesday, July 29, 2026, Tekamah City Clerk/Treasurer Karolyn McElroy confirmed receipt of your request. She explained that the City could not respond until the following week when the City Attorney was back in the office. You replied stating that you understood the delay. On August 4, 2026, Ms. McElroy emailed you the City's response. Chief Goeken, in a letter dated both July 29 and July 30, explained that the Department did not have public records related to the first four categories. He explained the Department allowed a private party to use a room at the police station for the class, but it did not facilitate, schedule, or provide instruction related to the class. He further responded to category five by explaining that the Department did not have the requested gun lock records as the items are not inventoried, nor were they purchased using funds from the City budget. Finally, Chief Goeken confirmed that the Department did not have a public record detailing whether Department facilities had been used in the past for other educational courses or programs.

On August 10, 2026, you submitted a public records petition to our office. You claimed that once the Department posted information about the hunting education class on its Facebook page, it opened the door "to obtain all information regarding the class and the instructors and their history." You stated that the Department failed to provide the requested information concerning gun locks and noted the lack of transparency and accountability in the Department's recordkeeping. Finally, you asserted the City failed to respond within the required four-business-day time frame. You accused law enforcement officials of backdating documents to circumvent NPRS requirements.

DISCUSSION

I. Records from the Hunter Education Program and its Instructors.

In Nebraska, public records include "all records and documents, regardless of physical form, *of or belonging to* ... any ... city [or] department" Neb. Rev. Stat. § 84-712.01(1) (emphasis added). The Nebraska Supreme Court has ruled that the "of or belonging to" language ... includes any documents or records that a public body is entitled to possess—regardless of whether the public body takes possession. The public's right of access should not depend on where the requested records are physically located."

Evertson v. City of Kimball, 278 Neb. 1, 9, 767 N.W.2d 751, 759 (2009). Thus, when public bodies partner with private entities, the NPRS do not allow the government to “conceal public records by delegating their duties to a private party.” *Id.* at 12, 767 N.W.2d at 761. However, the Nebraska Supreme Court further recognized the NPRS “should not permit scrutiny of all a private party’s records simply because it contracts with a government entity to provide services.” *Id.* at 11, 767 N.W.2d at 761. Balancing these interests, the Court concluded that

under § 84–712.01, requested materials in a private party’s possession are public records if the following requirements are met: (1) The public body, through a delegation of its authority to perform a government function, contracted with a private party to carry out the government function; (2) the private party prepared the records under the public body’s delegation of authority; (3) the public body was entitled to possess the materials to monitor the private party’s performance; and (4) the records are used to make a decision affecting public interest.

Id. at 12, 767 N.W.2d at 761.

Accordingly, we applied the *Evertson* test to determine whether the requested documents in the possession of the class’s instructors are public records of or belonging to the Department. The Department did not delegate its authority to perform a government function to the class provider. Teaching youth classes about hunting is not a government function of a police department. The Department had no authority or supervisory powers over the class or its instructors. It was not entitled to monitor the class’s performance. According to Chief Goeken, the Department had no prior relationship with the hunting class. No contract, fee arrangement, or written agreement existed between a public body and the class instructors. Tekamah officials did not teach, observe, schedule, facilitate, or promote the class. The City simply allowed it to use a conference room, and the Department made a social media post about the class after it concluded. Since the test’s requirements were not met, the records requested in categories one through four of your request are private records, not public records. Thus, the City’s response to your request was lawful.

II. *Records Regarding Gun Locks and Previous Classes*

In response to categories five and six of your requests, Chief Goeken explained that the Department did not possess responsive records. We reviewed all the available materials, and it does not appear that the City or the Department have any records that would satisfy your request. The Department does not keep an inventory of its gun locks. There is no record of the cost of the gun locks, as they were not purchased with City funds. There is no record of past educational uses of the Department’s facilities. The NPRS do not require a public body 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); Op. Att'y Gen. No. 87104 (October 27, 1987). Further, “[i]n the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties....” *Wolf v. Grubbs*, 17 Neb. App. 292, 310, 759 N.W.2d 499, 517 (2009) (alteration in original). We find no indication that the City acted in bad faith with respect to your request, and have no reason to believe that it denied you access to public records. The records you seek do not exist.

III. *Timeliness of the Response*

Neb. Rev. Stat. § 84-712(4) states in the relevant part, “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 [the custodian shall provide], a written explanation, including the earliest practicable date for fulfilling the request....” You submitted your public records request on Tuesday, July 28, 2026. In your request, you asked the City when you might expect a response if the response time exceeded four business days. The next day, Ms. McElroy explained that, due to absent staff, the City could not respond until “next week.” You then thanked Ms. McElroy and stated you anticipated a response “early next week.” The City then sent its response on the morning of Tuesday, August 4, 2026, five business days after receiving the request.¹

“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.” *State ex rel. BH Media Grp., Inc. v. Frakes*, 305 Neb. 780, 792–93, 943 N.W.2d 231, 243 (2020). The requirement in Neb. Rev. Stat. § 84-712(4) for a public body to provide the requester with “the earliest practicable date for fulfilling the request” demands more specificity than an approximation such as “next week.” While the City should have provided the exact date it expected to fulfill the request, there is no question the parties understood that a response would be provided the following week. Consequently, we will take no action other than to remind the City of the requirements in Neb. Rev. Stat. § 84-712(4).

¹ Although the letter was dated July 29 and 30, we find no evidence of intentional manipulation. The City began processing your public records request on July 29. It provided its official response on August 4, once the City Attorney returned to the office.

CONCLUSION

The City does not have public records responsive to your request. It did not deny your request; rather, it has no records to provide. Application of the *Evertson* test makes clear that records of or belonging to private course instructors are not public records. Since you have not been denied public records, and we have identified no violations of the NPRS, 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 a private attorney to determine what additional remedies, if any, are available to you under these statutes.

Sincerely,

MIKE HILGERS
Attorney General



Ben Kinnison
Assistant Attorney General

c: Matthew Munderloh (via email only)

37-080-31