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MIKE HILGERS
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August 27, 2026

Via email: [REDACTED]
Marvin Kottman

RE: *Public Records Matter Involving Nebraska Game and Parks Commission*
Our File No. 20261080

Dear Mr. Kottman:

This letter is in response to your petition received by this office on August 12, 2026, in which you sought our review of your public records request submitted to the Nebraska Game and Parks Commission (the "Commission") on July 7, 2026, seeking records relating to an encounter with a Commission conservation officer occurring in June 2026. We have 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 and the materials attached thereto. On July 7, 2026, you submitted a public records request to the Commission seeking "access to and copies of all records related to a law enforcement stop" by Commission Conservation Officer Matt Costello occurring in June 2026. Specifically, you requested:

[A]ll records and media related to this incident, including but not limited to:

1. The complete incident report/case report
2. Officer narrative and any supplemental reports authored by Matt Costello or any assisting officers

3. CAD/dispatch logs showing call initiation, unit arrival, detention time, and clearance time
4. All radio traffic audio recordings related to the incident
5. Body-worn camera footage from all responding officers (if available)
6. Dash camera footage (if available)
7. Any wildlife enforcement worksheets, field notes, or investigative documentation
8. Any documentation reflecting the suspected violation or legal basis for the stop and detention

You thereafter submitted a follow-up letter to the Commission on a date before July 27, 2026, advising the Commission that you had not yet received a response to your records request and requesting a status update on your request and the production of responsive records. The copy of this letter included with your petition is undated.

In a letter dated July 27, 2026, the Commission responded to your records request. The Commission, through Division Administrator Angela Janda-Craig, advised that it was in possession of body-worn camera footage and field notes relating to the law enforcement encounter described in your request, but such records would be withheld pursuant to Neb. Rev. Stat. § 84-712.05(5) as records developed in connection with an investigation into potential unlawful activity. In pertinent part, Ms. Janda-Craig stated:

NGPC conservation officers are law enforcement officers charged with the duty of investigating potential violations of Nebraska's wildlife, parks, and boating laws. The stop at issue was initiated in connection with Officer Costello's investigation of a suspected violation, involved the temporary seizure of a firearm, and body-worn camera footage of the encounter was developed by Officer Costello in the course of that investigative activity.

Ms. Janda-Craig also stated that the requested field notes "were developed by Sergeant Cory Krause in connection with his investigation of a suspected wildlife violation" and would also be withheld. Ms. Janda-Craig further advised that no other responsive records exist.

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. "Public records" are defined as

[a]ll 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. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (2024). Based on this broad definition, there is no question that the requested records are public records as contemplated by the NPRS.

However, while the NPRS broadly authorize public access to public records, they are not absolute. Section 84-712.05 lists several categories of public records that may be withheld at the discretion of the records custodian. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. See *Evertson v. City of Kimball*, 278 Neb. 1, 7-8, 767 N.W.2d 751, 758-59 (2009). Consequently, it is the Commission's burden to show that the investigatory exception applies. Pertinently, § 84-712.05(5) provides:

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

...

(5) 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, except that this subdivision shall not apply to records so developed or received:

- (a) Relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person; or
- (b) Relating to the cause of or circumstances surrounding the death of an employee arising from or related to his or her employment . . .

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years and has consistently determined that law enforcement agencies may withhold records developed or received by those agencies in the course of an investigation.¹ These

¹ 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*

determinations have included recordings of law enforcement encounters.² Our conclusions in these dispositions have been based on both the plain text of the statute and the holdings of the Nebraska Supreme Court, which has stated:

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.

Jacob v. Nebraska Bd. of Parole, 313 Neb. 109, 125, 982 N.W.2d 815, 829 (2022).

Turning to the records in question, there is no question that the Commission and its conservation officers are charged with duties of investigation of persons, institutions, and businesses. See, e.g., Neb. Rev. Stat. § 37-604 (2016) ("It shall be the duty of all conservation officers . . . to make prompt investigation of and arrests for any violations of the Game Law observed or reported by any person . . ."). As described previously, Ms. Janda-Craig stated that the body-worn camera footage and field notes were developed in connection with an investigation by Commission officers into a suspected violation of the Nebraska Game Law. Based on the information provided to our office and our review of relevant Nebraska law, we conclude that the requested records may be properly withheld pursuant to § 84-712.05(5).³

You expressed concerns with the Commission's response with respect to its compliance with the requirements of § 84-712.04 and the stated nonexistence of other records responsive to your request. Section 84-712.04(1) provides that a public body's denial of a public records request must include the following:

- (a) A description of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof

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>.

² See, e.g., *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).

³ We note your petition requested our office review the requested records *in camera* "[i]f necessary" to determine the applicability of the investigative records exception. Our office is not authorized by the NPRS to conduct an *in camera* review of records withheld by public bodies. Pursuant to § 84-712.03(2), only Nebraska courts may "view the records in controversy *in camera*."

- expressly providing the exception under section 84-712.01 relied on as authority for the denial;
- (b) The name of the public official or employee responsible for the decision to deny the request; and
 - (c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

Having reviewed the Commission's denial, we conclude it contains all required information and satisfies the statutory requirements. As discussed above, Ms. Janda-Craig informed you the responsive body camera footage and field notes were generated pursuant to the Commission officers' investigation into potential violations of the Nebraska Game Law, including the encounter with Conservation Officer Costello. She provided the statutory basis to withhold the requested records, i.e., § 84-712.05(5). We have also found no cause to believe that Ms. Janda-Craig or the Commission have acted in bad faith in determining whether responsive records exist and whether extant records may be withheld.⁴

As a final matter, we note the delay in the Commission's response to your records request. Section 84-712(4) requires public bodies to respond to requests for public records within four business days after the date of receipt. We will take this opportunity to remind the Commission, by providing a copy of this letter to Ms. Janda-Craig, that the NPRS requires timely responses to requests for public records, and that strict compliance with the statutory timeframe must be met in the future.

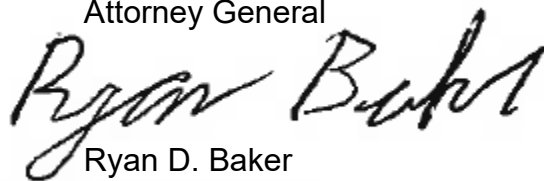
⁴ Under Nebraska law, it is generally presumed that public bodies and officers carry out their duties in good faith. See *Wolf v. Grubbs*, 17 Neb. App. 292, 310, 759 N.W.2d 499, 518 (2009) (observing that, in a case involving the Open Meetings Act, "[i]n the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties").

CONCLUSION

For the reasons set forth above, we conclude that the Commission's denial of your public records request did not violate the NPRS. 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 in a cursive style.

Ryan D. Baker
Assistant Attorney General

c: Angela Janda-Craig (via email only)

55-138-31