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Office of the Attorney General

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September 4, 2026

Via email at: [REDACTED]
Spencer Johnson
[REDACTED]

RE: *Public Records Matter Involving the Lexington Police Department*
Our File No. 20261083

Dear Mr. Johnson:

This letter is in response to your public records petition received by this office on August 14, 2026. You asked us to review the Lexington Police Department's (LPD) response to your August 4, 2026, public records request, in which it sought records related to LPD's automated license plate reader (ALPR) searches, policies, and agreements. On August 31, we wrote to you indicating we were communicating with the Lexington City Attorney about your petition and that our final response would be provided to you no later than September 4. We considered your petition, the documents provided, and other information provided by City Attorney Brian W. Copley and Police Chief Paul Schwarz, 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 August 4, 2026, you submitted a public records request to the LPD. Your request contained two parts. "Part A" sought LPD's ALPR system history or audit trail of searches performed by LPD personnel between the system's inception and the present. You requested locally generated user activity including the dates and times of searches, the identification of the employee who performed the search, the reason for the search, and the type of search. "Part B" of your request sought several related ALPR documents including (1) LPD's ALPR use policy; (2) its privacy and data-sharing policy; (3) LPD's most recent annual ALPR usage report submitted to the Nebraska Commission on Law Enforcement and Criminal Justice (Crime Commission); (4) any contracts, agreements,

or MOUs between LPD and an ALPR vendor including any data-sharing agreements; and (5) a current list of outside agencies granted access to LPD's ALPR data and vice versa.

On August 10, 2026, Chief Schwarz directed you to www.cityoflex.com and explained that the city's website contains "all the information listed in your request." On August 12, you emailed Chief Schwarz and explained that you were unable to locate the requested records on the city's website. You clarified you were seeking records of which personnel queried the ALPR system, when, and for what reason. You asked for assistance locating these records on the city's website or, alternatively, confirm that the LPD had decided not to release them.

On August 14, 2026, Chief Schwarz sent you a formal letter explaining that LPD's ALPR policy and usage report are located on the city's website. It further denied the remainder of your request pursuant to Neb. Rev. Stat. § 84-712.05(5).

In your petition to our office, you allege that LPD officials failed to describe the withheld records in violation of Neb. Rev. Stat. § 84-712.04. You state that LPD failed to justify its decision to withhold records, explain its reasoning, or provide reasonably segregable portions of the requested records. You further argue that the system history logs are administrative and are "not compiled in connection with any identified investigation" You question how Neb. Rev. Stat. § 84-712.05(5) applies to "Part B" of your request. Finally, you state that the LPD did not provide the ALPR policies and usage report.

After receiving your petition, our office contacted Chief Schwarz and Mr. Copley. They clarified that LPD had ALPR search history information but withheld it under § 84-712.05(5) as it was developed by law enforcement officers conducting searches as part of specific investigations. They reiterated that LPD provided access to its ALPR policies and annual usage report through a link to its website. Chief Schwarz and Mr. Copley explained that LPD does not allow outside agencies to access its ALPR data. Other agencies cannot search within LPD's system, so no data sharing agreements or access lists exist. Finally, LPD has a service agreement with Flock Group Inc. LPD denied you access to this document under § 84-712.05(5). After further review, it identified 84-712.05(9) as an additional basis for withholding the agreement because it contains information about the protection of the security of public property.

DISCUSSION

I. *LPD's Decision to Withhold ALPR Audit Trail and Internal System Search History Records*

Neb. Rev. Stat. § 84-712 sets out the basic rule for access to public records in Nebraska. That statute provides, in pertinent part:

Except as otherwise expressly provided by statute, all residents of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

Public records “include all records and documents, regardless of physical form, of or belonging to ...” any city or department “[e]xcept when any other statute expressly provides that particular information or records shall not be made public....” Neb. Rev. Stat. § 84-712.01(1). In Nebraska, access to public records is broad, but not absolute. Neb. Rev. Stat. § 84-712.05 currently contains thirty categories of records that may be withheld at the discretion of the records custodian. The burden of showing that a statutory exception applies to the disclosure of records rests upon the custodian of these records. *State ex rel. BH Media Grp., Inc. v. Frakes*, 305 Neb. 780, 788, 943 N.W.2d 231, 240 (2020); *Aksamit Res. Mgmt. LLC v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

In this case, the LPD relied on § 84-712.05(5) to withhold responsive records. This exception allows a public body to lawfully withhold

[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....

“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*, 299 Neb. at 123, 907 N.W.2d at 308. Further, the Nebraska Supreme Court has clarified that

[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).

Chief Schwarz explained to our office that LPD has search history documents responsive to “Part A” of your request. These records were exclusively developed when LPD officers entered plate numbers or vehicle descriptions into the ALPR system as part of investigations. LPD asserts that its officers search within its ALPR system data only as part of specific investigations into violations of a state statute or city ordinance. LPD’s ALPR use policy further provides that the system shall only be used for official law enforcement purposes and in conjunction with patrol operations or criminal investigations. Thus, the activity giving rise to the search history records is related to LPD’s law enforcement duties. There is a rational relationship between an ALPR data search for a vehicle and LPD’s duty to investigate violations of laws and ordinances. Records LPD developed from vehicle image or license plate number searches to combat criminal activity constitute investigatory records. Accordingly, LPD did not unlawfully withhold the requested audit records under the NPRS.¹

II. *LPD’s Response to Your Request for Its ALPR Policies and Annual Usage Report.*

Neb. Rev. Stat. § 84-712(3)(a) provides that a public records custodian is not required “to copy any public record that is available to the requester on the custodian’s website on the Internet. The custodian of the public record is required to provide the location of the public record on the Internet to the requester.” In response to your requests for (1) LPD’s ALPR use policy, (2) its privacy and data-sharing policy, and (3) LPD’s most recent annual ALPR usage report submitted to the Crime Commission, Chief Schwarz referred you to www.cityoflex.com. As of today’s date, under the Police Department’s tab on this website is a link titled “Flock Safety System.” LPD’s ALPR use and privacy policies, along with its most recent usage report, are posted at <https://cityoflex.com/flock-safety-system/>. Although Chief Schwarz did not provide you with an exact link, he directed you to the correct website. LPD provided you with responsive records for this portion of your request in accordance with the NPRS.

III. *LPD’s Decision to Withhold Its Service Agreement with Flock Group Inc.*

Finally, your request sought agreements between LPD and its ALPR vendor, data sharing agreements with other agencies, and a list of outside agencies granted access to

¹ All ALPR search history records are not necessarily investigatory records under § 84-712.05(5). We acknowledge it is possible for bad actors to abuse ALPR systems and conduct searches outside of a law enforcement agency’s investigative duty. LPD represented to our office that any time its officers searched its ALPR system, it was pursuant to a law enforcement investigation. “[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). We have no evidence to suggest that LPD officers performed non-investigatory searches.

LPD's ALPR data. Chief Schwarz and Mr. Copley informed our office that the LPD does not allow outside agencies access to its ALPR data. There are no data sharing agreements or lists. LPD's only remaining responsive record is a "Service Agreement and Customer Implementation Guide for Law Enforcement." LPD withheld access to this agreement under § 84-712.05(5) because it contains strategic and tactical information used in law enforcement training. After further review, it now also relies on § 84-712.05(9) as its basis for withholding the agreement. The Nebraska Supreme Court has permitted public bodies to change their reasoning for withholding a record upon commencement of litigation. See *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 848, 885 N.W.2d 44, 49 (2016). Section 84-712.05(9) allows LPD to lawfully withhold

[i]nformation solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law.

According to Chief Schwarz and Mr. Copley, the withheld agreement contains information on the installation, location, computer network scheme, and vulnerabilities of the ALPRs. The agreement details information pertaining to the security of the ALPRs intended to prevent or mitigate criminal acts against them. LPD asserts that the public disclosure of this information, which includes details of the weaknesses and limitations of LPD's public ALPR property, would create a substantial likelihood of endangering public safety or property. Thus, we conclude the agreement may be lawfully withheld from public disclosure. And because the agreement falls squarely within the parameters of subsection (9), it is unnecessary to analyze LPD's reliance on subsection (5).

IV. *The Content of LPD's Responses to Your Public Records Request*

Under 84-712(4), after receiving a public records request, the custodian is required, within four business days, to provide the requester with either (a) access to the records, (b) a written denial of the request in accordance with Neb. Rev. Stat. § 84-712.04, or (c) a written explanation of its reasonable delay. In response to your detailed August 4 request, Chief Schwarz simply directed you to the City's website where some, but not all, of the requested records were accessible. This correspondence failed to address most of the information sought in your request and prompted confusion between the parties.

After you clarified your request, Chief Schwarz sent you a formal denial letter on August 14. This letter again directed you to some responsive records but broadly asserted

Neb. Rev. Stat. § 84-712.05(5) as the basis for denying the remainder of your request. The letter contained no further descriptions, explanations, or analyses. Section 84-712.04(1) provides that any person denied access to public records shall receive a written response containing at least

(a) [a] description of the contents 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 expressly providing the exception under section 84-712.01 relied on as authority for the denial.

In their communications to our office, LPD officials identified and described the contents of the withheld records as ALPR search history records generated by officers in the course of their investigations, and a “Service Agreement and Customer Implementation Guide for Law Enforcement” containing detailed security information about the vulnerabilities of its ALPRs. Chief Schwarz and Mr. Copley provided our office with specific citations to § 84-712.05(5) and (9), correlated the withheld records to those citations, and explained the specific reasoning supporting the denial. We will remind LPD officials of their duty to provide this detail to members of the public for all future public records denials.

CONCLUSION

For the reasons discussed above, we conclude that the LPD’s denial of your public records request was lawful. It provided access to some of the requested records through its website. It lawfully withheld search history records that were developed by law enforcement officers pursuant to investigations. It lawfully withheld service agreements that solely pertain to the protection of public property. Although LPD failed to provide you with all the required information in its denial letter, it is not precluded from withholding the relevant records from public inspection under the NPRS. Since no further action by this office is necessary, we are closing this file.

Spencer Johnson
September 4, 2026
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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

A handwritten signature in blue ink, appearing to read "Ben Kinnison", is written over the printed name.

Ben Kinnison
Assistant Attorney General

c: Brian W. Copley (via email only)

37-083-31