



STATE OF NEBRASKA  
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September 18, 2026

Via email at [REDACTED]  
Curt Safranek  
[REDACTED]

RE: *Public Record Matter Involving the Department of Health and Human Services*  
Our File No. 20261101

Dear Mr. Safranek:

This letter is in response to the public records petition dated and received by this office on September 3, 2026. You have requested we review the denial by the Department of Health and Human Services (DHHS) of your public records request submitted to the agency on August 20, 2026. We forwarded your petition to DHHS Agency Legal Counsel Neleigh Boyer upon receipt, and discussed it with her on September 4. At our request, on September 14 we received a written response to your petition from DHHS attorney Grace Halsted. We considered your petition and the DHHS response in accordance with the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024), amended 2026 Neb. Laws LB 525 and LB 1096. Our findings in this matter are set forth below.

**RELEVANT FACTS**

On August 20, 2026, you submitted the following records request to DHHS via its records online platform:

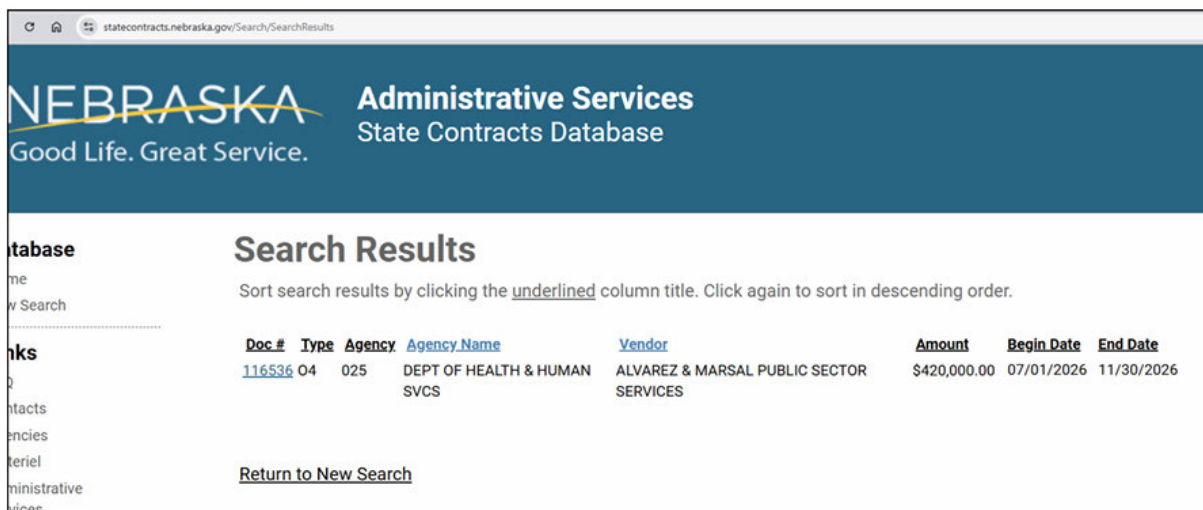
I am requesting an appointment to physically view a Nebraska state (DHHS) contract:

- Document # = 116536
- Type = O4

- Agency = 025
- Agency Name = Dept. of Health & Human Svcs
- Vendor = Alvarez & Marsal Public Sector Services
- Amount = \$420,000
- Begin Date = 8/19/2026
- End Date = 12/31/2026

Please let me know when and where (e.g., DHHS - 301 Centennial Mall South) this document will be made available for my examination.

On August 31, DHHS Public Records responded to your request, informing you the agency had no responsive records. You emailed certain DHHS officials in response, advising them of the “abundantly **obvious** consequences for this blatantly illegal action,” among other things (your emphasis). You requested DHHS attorney Thomas Skutt, Jr. to “re-conduct your ‘diligent search’ and provide [the department’s publicly acknowledged and evidenced existence of] the requested documents without further delay, which is already past the statutory deadline.” Your response included the following graphic, which you described as “[a] few details to assist in your search[.]”



The screenshot shows a web browser window with the URL [statecontracts.nebraska.gov/Search/SearchResults](http://statecontracts.nebraska.gov/Search/SearchResults). The page header features the Nebraska logo with the tagline "Good Life. Great Service." and the text "Administrative Services State Contracts Database". The main content area is titled "Search Results" and includes a sorting instruction: "Sort search results by clicking the underlined column title. Click again to sort in descending order." Below this is a table with the following data:

| <u>Doc #</u>           | <u>Type</u> | <u>Agency</u> | <u>Agency Name</u>          | <u>Vendor</u>                           | <u>Amount</u> | <u>Begin Date</u> | <u>End Date</u> |
|------------------------|-------------|---------------|-----------------------------|-----------------------------------------|---------------|-------------------|-----------------|
| <a href="#">116536</a> | O4          | 025           | DEPT OF HEALTH & HUMAN SVCS | ALVAREZ & MARSAL PUBLIC SECTOR SERVICES | \$420,000.00  | 07/01/2026        | 11/30/2026      |

At the bottom of the table, there is a link: [Return to New Search](#).

Later on August 31, DHHS attorney Michele Young responded to your email stating, “there was no contract finalized with Alvarez and Marsal [A&M], so we have no records responsive to your request.” In response to this email, you indicated the status of the document was irrelevant. You further stated:

[M]y request is for the clearly identifiable document named below, regardless of its actual disposition, which we now know to be an unenforceable contract. That document exists within the state’s system(s), was generated and developed with public funds through public employees’ work in the course of their public service,

went through the state's administrative purchasing systems, and clearly falls under the purview of the [NPRS].

You asserted there was no statutory basis to withhold "this document or its contents, nor any document on the basis of its actual execution/performance, or with respect to its stated disposition." You again requested the document be provided to you without delay.

DHHS Public Records continued the discussion on September 1, informing you that "[t]o the extent you are now seeking drafts of a contract that was never executed, those are preliminary materials and not 'records' or 'documents' and may be withheld by the agency. See Op. Att'y Gen. No. 91054 (June 17, 1991)." You were advised of your legal remedies and informed that Ms. Boyer was the official responsible for denying your request.

In response, you thanked Ms. Boyer for referencing the opinion. However, you pointed out that she ignored the portion of the opinion which actually mattered, i.e., that "materials which been through the formation process within the agency . . . and which have left the agency . . . are more obviously 'records' or 'documents' even though procedures may require further approval before formal issuance. This latter category of documents, while arguably involving materials in a 'draft' form, still constitutes 'records' or 'documents' subject to disclosure." (Emphasis and "editorial commentary" omitted.) Applying this language to the contract in question, you assert it

clearly went through the agency's formation process, left the agency (multiple times), was recorded and updated (multiple times) in the state's Purchasing Database (a separate division), and was in the hands of A&M and its attorney. Further, A&M, despite your assertion, had purportedly already begun work on this contract, with multiple individuals from A&M purportedly present during interRAI appeals, asking questions on the official record. As such, while you can certainly assert, uncontested, that the contract was never finalized, that assertion, given the document's publicly declared and admitted dissemination to, and receipt by, an external private party, clearly subjects this document to the AG's latter category classification per its opinion id [*sic*], rendering it subject to disclosure.

You requested Ms. Boyer to follow state law, our opinion, avoid further delay and "produce the requested document." The exchange ended with Ms. Boyer informing you the agency had provided its response, had provided you your appeal rights, and stood on its position "as previously stated."

## **YOUR PETITION**

You state in your petition that you did not request "drafts [or] other preliminary records or documents related to this matter" but rather "records and documents subject to disclosure." You clarified that your request seeks "the contract, in it 'final,' albeit

*unexecuted*, form.” (Your emphasis.) You refute DHHS’s claims that a final contract does not exist, arguing that public statements and actions from DHHS and the contractor “provide irrefutable proof to the contrary: the actual and true, non-embryonic, advanced classification of the contract’s form and existence.”<sup>1</sup>

Your petition reiterates the assertions you made to DHHS officials on September 1, i.e., that the requested document, “while arguably involving materials in a ‘draft’ form,”<sup>2</sup> was still subject to disclosure. You argue that DHHS’s decision to no longer partner with A&M, along with representations that the contract was never signed,

do not serve to reclassify this document – a final, shared contract back into something classified as draft, preliminary, embryonic, or otherwise. Rather, the contract, having been through a lengthy formation process and having clearly left the department, remains “records” or “documents” subject to disclosure *id [sic]*.

Clearly, any reasonable and prudent person can easily and correctly presume that A&M was in receipt of the documents sought under my public records request . . . . A reasonable and prudent person would also not believe that a contract was so far along as to hear a statement from the department’s director indicating it was in its “final phase” of the contract process, yet then be told that the vendor had not received anything written, including a final version of the contract – which is effectively what the department is asserting when they improperly classify the contract as “draft”, “preliminary material”, or “embryonic”, in the words of the AG’s opinion *id [sic]*.

In sum, you state that although the contract was never finalized, the document’s dissemination to the contractor, with the intent to contractually engage with DHHS for a specific amount, term, and specific services “clearly subject this document to the AG’s latter category classification per its opinion *id [sic]*, rendering it subject to disclosure.”

### DHHS’s RESPONSE

According to Ms. Halsted, DHHS acknowledges that the Department of Administrative Services [DAS] State Contracts Database reflected that DHHS had an active contract with A&M beginning July 1, 2026. However, she states the listing was inaccurate and no documents were ever published on the database. Ms. Halsted explains that the inaccurate listing on the website is due to the drafting process used for contracts.

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<sup>1</sup> For example, your petition contains links to: A local television news story about the proposed contract; minutes from a July 29, 2026, meeting of the Governor’s Developmental Disability Advisory Committee, which indicate “[t]he Division of Disability and Aging is currently in the **final phase of contracting** with an independent consultant . . . (your emphasis); and an August 18, 2026, DHHS news release announcing the proposed partnership with A&M.

<sup>2</sup> Op. Att’y Gen. No. 91054 (June 17, 1991) at 3 [*“Opinion”*].

When drafting a contract, DHHS staff inputs basic information, i.e., vendor, term, contract value, in the DAS contracting system. The system then assigns the contract an identifying number. This number is included on all draft documents within DHHS for tracking and organizational purposes. Once the contract is finalized and executed, all contractual documents are loaded as PDFs in the State's contract system. The documents loaded into the system are automatically matched with the corresponding database entry through the contract number, which causes the PDFs to become viewable on the website.

Ms. Halsted further clarifies that DHHS initially intended to enter into a no-bid contract with A&M. As outlined above, DHHS inputted basis information into the DAS database to obtain a contract number, with a proposed start date of July 1, 2026. However, negotiations extended past the July 1 start date. Since "July 1, 2026" had been inputted into the DAS system, the contract automatically posted to the DAS website as "active" beginning on this date, despite the fact no contract had been loaded into the system. As a result, the DAS website erroneously reflected an active agreement with A&M effective July 1, 2026, and provided a hyperlink that would have provided access to the contractual documents had they ever been loaded.

Ms. Halsted informs us that while negotiations extended well past July 1, no final agreement was ever reached. The last version of the draft contract contained redlines, highlights and comments throughout. As to the current state of the contracting process, Ms. Halsted informs us that DHHS is now pursuing competitive bidding options in lieu of contracting with A&M, and is currently drafting a request for proposal to use to solicit bids for the work contemplated to be performed by A&M.

Ms. Halsted argues your assertion that the contract must be final or public because A&M saw the drafts mischaracterizes the public records law. She points out that the Attorney General has addressed the issue of whether drafts remain confidential in a number of disposition letters, and cites in this respect the test employed in the *Opinion*:

The Attorney General fashioned criteria, to be applied on an individual, case-by-case basis, to "determin[e] what constitutes a record or a document under the [NPRS]." He concluded that notes and drafts of documents within an agency, which (i) are prepared by lower-level personnel, (ii) remain subject to approval by upper management, and (iii) have not been issued, are preliminary materials and not "records" or "documents" under the NPRS.

*File No. 20231072; Public Records Matter Involving the Department of Health and Human Services* (July 24, 2023) ["*Leick*"] at 2. Ms. Halsted states that in *Leick*, as well as our disposition in *File No. 22-R-157; Nebraska Department of Education; Joe Dejka, Omaha World-Herald, Petitioner* (November 9, 2022), we concluded that "despite data leaving an agency, the data was not in final form and therefore not subject to disclosure." Ms. Halsted also refers us to our disposition in *File No. 20-R-139; Department of Administrative Services; Senator M. Cavanaugh, Petitioner* (December 22, 2020) ["*Cavanaugh*"], in

which we concluded that DAS could withhold certain draft contracts in reliance on the *Opinion*.<sup>3</sup>

Finally, Ms. Halsted informs us that

because DHHS is actively preparing to pursue competitive bidding on this contract, releasing the draft A&M contract to the public, without it being in its final form, would put the State at a disadvantage. In Op. Att’y Gen. No 91054, the Attorney General considered “whether governmental work in progress must be released under the Public Records Act.” (*Id.* at 3). The Attorney General weighed the tension “between an agency’s legitimate need to internally operate without interruption and intrusion with the legitimate concern that public records might need to be hidden from view under a “draft” label.” (*Id.* at 3). The A&M contract was not signed, therefore was not executed, and indeed DHHS is instead moving forward with a competitive bidding process. If the draft contract were released, DHHS could be disadvantaged in the competitive bidding process because uniquely negotiated contractual terms for an established price would be available to potential bidders. This could hinder DHHS’ ability to engage in a fair bidding process with an untainted pool of bidders. The citizens of Nebraska deserve to have the best pool of bidders at a reasonable price.

For the foregoing reasons, DHHS stands by its responses that the documents sought by Mr. Safranek either do not exist or only exist in preliminary form and are not subject to disclosure under § 84-712.

## DISCUSSION

Neb. Rev. Stat. § 84-712(1) (2024) generally allows Nebraska residents and other interested persons the right to examine public records in the possession of public agencies during normal agency business hours and to obtain copies of records in certain circumstances. Neb. Rev. Stat. § 84-712.01(1) defines “public records” to include “all 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.” Access to public records is not absolute, however. The NPRS also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983).

We will begin by discussing the opinion relied on by DHHS in this matter. The *Opinion* involved a request from a state senator to the state Policy Research Office (PRO) for a report relating to the Central Interstate Low-Level Radioactive Waste Compact. PRO

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<sup>3</sup> These dispositions may be accessed at <https://ago.nebraska.gov/disposition-letters>.

provided no materials in response to the request. The senator subsequently directed his request to Governor Nelson, seeking “access to reports, draft reports, or other forms of documents” purportedly prepared by the Department of Environmental Control (DEC) relating to the potential liability to the state in the event the low-level radioactive facility site was not licensed. The governor did not specifically respond to the request, so the senator sought our review under § 84-712.03. The governor then requested an Attorney General opinion as to whether the exceptions to disclosure in Neb. Rev. Stat. § 84-712.05(3) (trade secrets, other proprietary or commercial information) or subsection (4) (attorney work product) provided a basis to withhold the records “if the work involved is still in progress and if those materials may be used against the State in future litigation.” *Id.* at 2.

In an effort to resolve the matter, our office requested and received the records at issue. Upon examination, we concluded the two exceptions proposed by the governor did not apply. However, in response to the governor’s “work in progress” inquiry, we articulated the following criteria to determine when materials prepared by public officials become “records and documents” subject to disclosure under § 84-712:

There is an obvious tension between a governmental agency's legitimate need to operate internally without interruption and intrusion on the one hand, and a legitimate concern that public documents might be hidden from view behind a "draft" label on the other. We believe that this tension should be resolved by determining what constitutes a record or a document under the Public Records Act on an individual, case-by-case basis. There may well be instances where certain materials are so embryonic that they do not constitute "records" or "documents" under the Act. For example, notes or drafts of documents prepared by lower level personnel within an agency which still remain subject to approval by upper management and which have not been issued by the agency. It seems to us that such preliminary materials do not constitute "records" or "documents" under the Public Records Act, and thus may be withheld from the public. In contrast, materials which have been through the formation process within the agency and which have left the agency are more obviously "records" or "documents" even though procedures may require further approval before formal issuance. This latter category of documents, while arguably involving materials in a "draft" form, still constitutes "records" or "documents" subject to disclosure.

*Id.* at 3. We noted that the records provided by the governor included a typed document prepared by DEC with numerous handwritten notes and suggestions added by PRO staff. We concluded the “final official form” of the document had been jointly prepared and approved by DEC and PRO, and that the work on the document had ended. Applying these standards to the records sought by the state senator, we concluded the typed materials were in final form and had left the agency and, consequently, constituted a record or document subject to disclosure under the NPRS. However, we also concluded that the handwritten notes and comments appended to the document by PRO staff were

not records or documents subject to disclosure since they had not been prepared in final form and had not left the agency. “In our view, they do not fit under the statutory definition of public record set out in § 84-712.01.” *Id.* at 4.

We have considered your arguments that the contract is subject to disclosure because, while not finalized *per se*, it was the subject of public discussion, publicly recorded and updated on a state agency website, and disseminated to the contractor. We find none of these reasons compelling. There is no question that DHHS’s proposed contractual arrangement with A&M was publicly discussed. We watched the news story and read the minutes and press release you provided. We acknowledge that the parties were likely close to finalizing the contract (see fn 1). But whatever contractual arrangement was contemplated by the parties, it did not happen. There was no shift to “a final, shared contract back into something classified as draft” because it was never final in the first place. Ms. Halsted explained why an unexecuted contract appeared on the contract database website. Moreover, your argument that the draft contract must be disclosed because A&M had copies of the proposed contract ignores the simple fact that DHHS and A&M were engaged in contract negotiations, something that DHHS could not do unilaterally.

As noted above, this office previously considered whether drafts of contracts between the state and private companies could be kept confidential. In *Cavanaugh*, DAS counsel represented that the drafts contained various proposed contractual terms that were negotiated by the parties, which may or may not have been accepted and incorporated in the final executed contract. Based on this representation, and applying the standards in the *Opinion*, we wrote that “we are unable to conclude that the draft contracts at issue here were in ‘final official form,’ that the work on the draft contracts had ended, or that the documents had been signed off and executed by upper management. They were as indicated in the denial letter, i.e., working documents.” *Cavanaugh* at 4. In the present case, Ms. Halsted represented that the draft contract is full of redlines, highlights and comments. It was not signed off and executed by upper management. Thus, we believe the same rationale employed in *Cavanaugh* applies here, and the draft document is not subject to disclosure under § 84-712.

## CONCLUSION

Based on the foregoing, we conclude there is no final contract between DHHS and A&M. Any draft contract in the possession of DHHS which sought to engage A&M is not a record or document subject to disclosure under § 84-712 of the NPRS. The records are not in final official form, are documents in progress, and have not been approved and executed by upper management. In light of our conclusion, you have not been denied access to public records and DHHS’s response to you in this regard was appropriate.

Curt Safranek  
September 18, 2026  
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If you disagree with the conclusion reached in this disposition letter, you may wish to discuss these matters with your private attorney to determine what, if any, additional remedies might be available to you under the Neb. Rev. Stat. § 84-712.03 of the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Neleigh Boyer (via email only)  
Grace Halsted (via email only)

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