

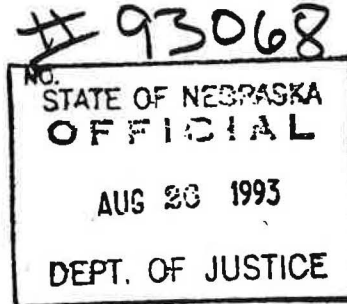


STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NEBRASKA 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
CAPITOL FAX (402) 471-3297  
1235 K ST. FAX (402) 471-4725

**DON STENBERG**  
ATTORNEY GENERAL

L. STEVEN GRASZ  
SAM GRIMMINGER  
DEPUTY ATTORNEYS GENERAL



**DATE:** August 19, 1993

**SUBJECT:** State Tort Claim Forms and the Public Records Statutes

**REQUESTED BY:** Larry Morris, Chief of Administration  
Nebraska Game and Parks Commission

**WRITTEN BY:** Don Stenberg, Attorney General  
Dale A. Comer, Assistant Attorney General

On July 20, 1993, the State Claims Board held a hearing on Tort Claim 93-469. That particular tort claim was filed on behalf of Eric T. Austin, and concerned damage to two upper front teeth apparently incurred in an accident on the water slide at Eugene T. Mahoney State Park. -The claimant rejected a settlement offer made by the State Claims Board and subsequently, the claimant's attorney sought access to other Claim for Injury or Damage forms filed in connection with accidents on the water slide. As a result of that inquiry, you posed the following question, "[a]re the Claim for Injury or Damage forms once completed by a claimant, considered a public document which could be provided to inquiring parties or are these claim forms to be confidential information?" In response to your question, we believe that the claim forms at issue are public records which must be made available to the public in conformance with the pertinent portions of the Nebraska Public Records Statutes.

Under Neb. Rev. Stat. § 81-8,212 (Cum. Supp. 1992), all tort claims such as the claim at issue in your opinion request are filed with the State Risk Manager in a manner prescribed by the State Claims Board. It is our understanding that a copy of each tort claim, on the Claim for Injury and Damage form referenced in your

David K. Arterburn  
L. Jay Bartel  
J. Kirk Brown  
David T. Bydalek  
Laurie Smith Camp  
Delores N. Coe-Barbee  
Dale A. Comer

James A. Elworth  
Lynne R. Fritz  
Royce N. Harper  
Mary L. Hewitt  
Lauren Lee Hill  
William L. Howland  
Marilyn B. Hutchinson

Kimberly A. Klein  
Donald A. Kohtz  
Joseph P. Loudon  
Charles E. Lowe  
Lisa D. Martin-Price  
Lynn A. Nelson  
Harold I. Mosher

Fredrick F. Neld  
Marie C. Pawol  
Kenneth W. Payne  
Paul N. Potadie  
Jan E. Rempe  
James H. Spears  
Mark D. Starr

John R. Thompson  
Barry Waid  
Terri M. Weeks  
Alfonza Whitaker  
Melanie J. Whittamore-Mantzios  
Linda L. Willard

Larry Morris  
August 19, 1993  
Page -2-

opinion request, is then forwarded to the state agency involved with the claim, where it becomes a record of that agency. The claim is then investigated and dealt with as required by statute.

The Nebraska Public Records Statutes are found at Neb. Rev. Stat. §§ 84-712 to 84-712.09 (1987 and Cum. Supp. 1992). Those statutes generally provide that records of public bodies in Nebraska shall be available for inspection by members of the public at the places of business of the public bodies during their normal business hours. However, Section 84-712.05 sets out a number of categories of public records which may be withheld from public inspection at the option of the public body involved. It seems to us that the copy of the completed claim form at issue in your opinion request is clearly a public record since it is a document on file with and belonging to the Game and Parks Commission. Therefore, it is necessary to determine if the record in question falls under any of the exceptions to disclosure set out in Section 84-712.05.

We dealt with almost this precise issue in a previous opinion of this office. Op. Att'y Gen. No. 91039 (May 13, 1991) considered the impact of the Public Records Statutes upon a number of various types of documents maintained in the Office of Risk Management. With respect to tort claims forms, we stated:

Pursuant to Neb. Rev. Stat. § 81-8,212 (1990 Cum. Supp.), tort claims must be filed with the Risk Manager in the manner prescribed by the State Claims Board. . . . In our opinion, all such claims and attachments are beyond any of the exemptions in Neb. Rev. Stat. § 84-712.05, and, therefore, said documents are public records which must be disclosed upon request.

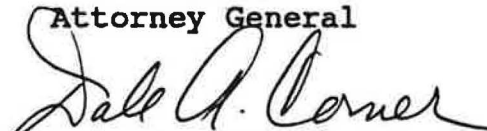
*Id.* at 6. We continue to believe that the various exemptions from disclosure set out in Section 84-712.05 do not apply to the Claim for Injury and Damage form referenced in your opinion request. Therefore, that document must be disclosed as required by the statutes. We would also point out, however, that this opinion is limited to the specific claim form at issue. As noted in Opinion No. 91039, other documents generated in connection with tort claims

Larry Morris  
August 19, 1993  
Page -3-

such as investigatory reports of state agencies involved may well fit under an exemption set out in Section 84-712.05 which would allow them to be kept confidential.

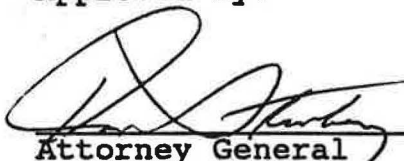
Sincerely yours,

DON STENBERG  
Attorney General



Dale A. Comer  
Assistant Attorney General

Approved by:

  
Attorney General

050P010.893