



STATE OF NEBRASKA  
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August 11, 2017

Nelson Harvey  
Associate Investigator  
Kass Research Group LLC  
PO Box 7056  
Denver, CO 80207

RE: *File No. 17-R-135; Nebraska State Patrol; Nelson Harvey, Petitioner*

Dear Mr. Harvey:

We are writing in response to your correspondence received by this office on July 27, 2017, in which you petitioned for our review of the response to your request for certain public records belonging to the Nebraska State Patrol ("NSP") under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2014, Cum. Supp. 2016). As is our normal practice with such requests, we contacted the public body named in your correspondence. In this case, we provided your petition to Wendy Wussow, legal counsel for the NSP, and her office provided a response to us through Paralegal Kari Schmidt. We have now completed our analysis of this matter and our findings are set forth below.

### **RELEVANT FACTS**

Our understanding of the facts in this matter is based on your petition and the response we received from the NSP. In June and July 2017, you made requests for documents from the NSP relating to a traffic accident which occurred on Interstate 80 for which the NSP conducted an investigation. Your requests were made on behalf of an individual involved in the accident, Shawn Prueitt. The NSP provided you with documents responsive to those requests. Operative to your public records petition, you made a request on July 5, 2017 in which you sought additional documentation of the accident, including dashboard camera or body camera footage related to the investigation of the accident. The NSP denied your request as to the dashboard camera video as an investigatory record under Neb. Rev. Stat. § 84-712.05(5). In emails and phone conversations with Ms. Schmidt, she advised you that body camera footage does not exist, as the NSP does not have such equipment.

## DISCUSSION

The Nebraska Public Records Statutes (“NPRS”) generally allow interested persons the right to examine public records in the possession of public agencies in Nebraska during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. Except when any other statute expressly provides that particular information or records shall not be made public, public records shall 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. Neb. Rev. Stat. § 84-712.01(1). Under those statutes, every record “of or belonging to” a public body is a public record which individuals may obtain a copy of unless the custodian of the record can point to a specific statute which allows the record to be kept confidential. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. *State ex rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

The NPRS, however, do not require a public agency to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist. Neb. Rev. Stat. § 84-712; 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). This means the requestor is entitled only to make a request for specific documents or records, and the custodian is required only to provide documents or records responsive to the records request, if they exist.

Your petition concerns the availability of two records sought by you: dashboard camera and body camera footage. As to the body camera footage, Ms. Schmidt explained to you by phone and in an email dated July 17, 2017 that the NSP does not have body cameras. Consequently, no body camera footage is available for the traffic accident investigation involving Mr. Prueitt. The NSP has not violated the NPRS in responding that they do not have records responsive to this portion of your request.

As to your request for dashboard camera footage, the NSP denied your request for this record under Neb. Rev. Stat. § 84-712.05(5). You argue to us that because the investigation has concluded, there is “no compelling reason to withhold such footage from public review.” Although the NPRS provide for access to public documents, they are not absolute. 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). Neb. Rev. Stat. § 84-712.05 is comprised of eighteen categories of documents which may be kept confidential

from the public at the discretion of the agency involved. In the present case, the NSP has claimed the exception set out in subsection (5) as its basis for denying you access to the requested record. That subsection provides, in pertinent part:

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, citizen complaints or inquiries, 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 relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

In Nebraska, in the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Swift and Company v. Nebraska Department of Revenue*, 278 Neb. 763, 773 N.W.2d 381 (2009). The plain and ordinary reading of § 84-712.05(5) indicates that a law enforcement agency may withhold records it develops or receives in the course of its investigations. The NSP is a law enforcement agency and the dashboard camera footage was created during the investigation of an accident which occurred on Interstate 80 in Nebraska. The NPRS do not limit the time during which a public body is permitted to withhold an investigatory record and there is no requirement to release the record upon conclusion of the investigation. Ms. Schmidt previously advised you of the possibility of obtaining the dashboard camera footage via subpoena; however, NSP is not required to release it under the NPRS, as the record at issue falls squarely within the claimed exception.

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## CONCLUSION

For the reasons explained above, we conclude the NSP has not violated the NPRS with respect to your request for records, and that no further action by this office is warranted. Accordingly, we are closing this file. If you disagree with the analysis we have set out above, you may wish to consult an attorney to determine what additional remedies may be available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Natalee J. Hart  
Assistant Attorney General

cc: Wendy Wussow

02-666-29