



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

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
FAX (402) 471-3297 OR (402) 471-4725

**DOUGLAS J. PETERSON**  
ATTORNEY GENERAL

**LESLIE S. DONLEY**  
ASSISTANT ATTORNEY GENERAL

January 28, 2022

Via email at [REDACTED]  
Travis Thomas

RE: *File No. 22-R-103; Falls City Police Department; Travis Thomas, Petitioner*

Dear Mr. Thomas:

This letter is in response to your petition received by this office on January 13, 2022, in which you requested our review of the denial by the Falls City Police Department ("Department") of your public records request submitted on or about January 10, 2022. On January 21, the undersigned spoke to Deputy City Attorney Tracy Burns about your petition. At our request, on January 25, Ms. Burns provided our office a response which supplemented the Department's denial letter. We considered your petition and the Department's response in accordance with the provisions of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Supp. 2021). Our findings in this matter are set forth below.

### **RELEVANT FACTS**

Your public records request sought the following records:

[C]opies of all police staff employment records (evaluations, disciplinary actions).  
As well copies [*sic*] of all traffic stops for the year of 2021 (location, vehicle make and year, and the gender of the drivers of those vehicles).

Ms. Burns denied your request by letter dated January 11, 2022, citing the exceptions in Neb. Rev. Stat. § 84-712.05(5) and (7) as the basis to withhold the requested records. In her supplemental response, Ms. Burns states that "[t]raffic stops may be investigatory and do not always result in a citation being issued." She further states that you "did not request traffic citation information," but rather asked for "copies of all traffic stops" for 2021, including the "location, vehicle make and year, and the gender of the drivers" involved. Ms. Burns advises that the Department does not routinely generate records

containing these particular items, and would require the Department to create a document that currently does not exist.

You indicate in your petition that you are “conducting an investigation into the habits of the Falls City Police Department.”<sup>1</sup> Your petition contains no information or rationale to refute the Department’s denial of your public records request.

## DISCUSSION

The basic rule for access to public records in Nebraska is set out in Neb. Rev. Stat. § 84-712(1) (2014). This provision generally states that “[e]xcept as otherwise expressly provided by statute,” all Nebraska citizens 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. Neb. Rev. Stat. § 84-712(1) (2014). “Public records” are defined as

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) (2014). However, while the Nebraska Public Records Statutes do provide for access to public documents, they are not absolute. Nebraska law contains multiple instances where a particular record is confidential or may be withheld at the discretion of the records custodian.

Neb. Rev. Stat. § 84-712.05 (Supp. 2021) currently contains 23 categories of public records that may be withheld at the discretion of the records custodian so long as those records have not been “publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties . . . .” At issue here is the exception in § 84-712.05(7), which pertains to “[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information . . . .”

There is little question that performance evaluations and disciplinary records of Department employees constitute “personal information . . . regarding personnel of public

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<sup>1</sup> Please note that “[t]he public records statutes apply ‘equally to all persons without regard to the purpose for which the information is sought.’ As a general rule, citizens are not required to explain why they seek public information.” *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020). Accordingly, this office does not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

bodies.” The requested records constitute neither salary information nor routine directory information, which must be disclosed under the exception. Since the requested records fall squarely within the parameters of the exception, we find the Department’s denial of your request for records pertaining to Department personnel was appropriate.

With respect to your request for the locations, vehicle make and year, and gender of the drivers involved in all traffic stops in 2021, this office has taken the position that § 84-712 does not require a public body to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist. See 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). In this respect, Ms. Burns represents to this office that the Department has no discrete record containing this information, and that the Department would have to create a new record to fulfill your request. We find Ms. Burns’ January 25 response is consistent with the position set out in our opinions referenced above, and is appropriate in light of your particular request.


### CONCLUSION

Based on the foregoing, we conclude that police performance evaluations and disciplinary records are personal in nature, and do not constitute salary or routine directory information. Consequently, the Department’s withholding of the requested records under § 84-712.05(7) was proper. In addition, the Department has no legal obligation under § 84-712 to create a new record containing the traffic stop items listed in your request.

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 Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General

  
Leslie S. Donley  
Assistant Attorney General

c: Tracy Burns (via email only)