



STATE OF NEBRASKA  
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July 10, 2023

Via email to [REDACTED]  
Jeff Forward  
News Reporter  
The Fremont Tribune

RE: *File No. 23-R-124; City of Fremont/Police Department; Jeff Forward, The Fremont Tribune, Petitioner*

Dear Mr. Forward:

This letter is in response to your correspondence sent to the Attorney General's Communications Director, Suzanne Gage, on June 23, 2023. You are appealing the denial by the City of Fremont ("City") of your request for an incident report relating to a vehicular pursuit occurring on June 12, 2023. On June 30, we forwarded your petition to Molly J. Miller, City Attorney's Office, and requested a response to your appeal. We asked Ms. Miller to specifically address in her response provisions in § 29-3521 of the Security, Privacy, and Dissemination of Criminal History Information Act, Neb. Rev. Stat. §§ 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 (2016, Cum. Supp. 2022), relating to the dissemination of "incident reports." We received Ms. Miller's response on July 5. We have now considered your appeal and the City's response under the provisions of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022). Our findings in this matter are set forth below.

### **RELEVANT FACTS**

On June 16, 2023, you requested the following record from the City:

The Fremont Police Department ["FPD"] incident report from Monday, June 12, 2023, related to the pursuit of an alleged criminal suspect named Itsamar Ramirez who police officials chased in vehicles through the city of Fremont. The incident report or reports sought by The Tribune are documents that detail all aspects of the pursuit, including the officer who initiated it, any reports submitted by the officer

or officers involved and the times, streets traveled on and other details of the pursuit. [T]hese are public documents to be used for journalistic purposes.<sup>1</sup>

Ms. Miller responded on behalf of the City on June 21, citing Neb. Rev. Stat. § 84-712.05(5) as the basis for withholding the requested report.

You assert in your petition that the requested incident report is a public record, and that “if charges are filed in Dodge County (which we’ve been told are in process of being done), the report would become a public record because of its inclusion in the charging document.”

Ms. Miller informs us that the requested records fall squarely within the exception since they were “developed and/or received by the [FPD] and are part of the examination, investigation and intelligence information used in law enforcement . . . .” She indicates that the report’s contents not only include investigative information about the incident, but may also contain strategic or tactical information relating to the FPD’s pursuit procedures. In addition, Ms. Miller states that investigative records often contain “vulnerable information pertaining to victims” and that releasing such information could inflict further trauma and cause these individuals to be less willing to cooperate with law enforcement during investigations. Ms. Miller asserts that the disclosure of investigatory records would detrimentally compromise law enforcement’s ability to perform its duties.

With respect to the provision in § 29-3521<sup>2</sup> requiring criminal justice agencies to disseminate “original records of entry such as police blotters, offense reports, or *incident reports*,” Ms. Miller states that this not the information you requested. Rather, you sought records “detail[ing] all aspects of the pursuit, including the officer who initiated it, any reports submitted by the officer or officers involved and the times, streets traveled on and other details of the pursuit.” Ms. Miller states that “[t]he records maintained by the [FPD] are not solely original entry information regarding the beginning of the call, but additional information gained by the [FPD] during its continued investigation and response to the call.” She states that “[h]ad [you] asked for the CAD information [the 911 intake call log

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<sup>1</sup> “The 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) [*BH Media Group*]. Accordingly, we do not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

<sup>2</sup> This statutes states: “In addition to public records under section 29-3520, information consisting of the following classifications shall be considered public record for purposes of dissemination: (1) Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, or photographs taken in conjunction with an arrest for purposes of identification of the arrested person; (2) original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies; (3) court records of any judicial proceeding; and (4) records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's or other operator's licenses.” Neb. Rev. Stat. § 29-3521 (2016).

and information], [it] would have been provided.” Ms. Miller further asserts that § 29-3521 does not apply to the disclosure of the “full investigation documents, which is what the [FPD] creates and maintains.”

## DISCUSSION

In our recent disposition in *File No. 23-R-123; City of Fremont; Jeff Forward*, The Fremont Tribune, *Petitioner*, issued July 6, 2023, we informed you that while access to public records is very broad, it is not absolute. We also informed you that under § 84-712.05, public bodies have the discretion to withhold the various public records listed in the statute. In the present case, the City is again relying on § 84-712.05(5) to withhold the records in your request. This exception pertains, in part, to

[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, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training . . . .

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years.<sup>3</sup> We have consistently held that such withholding is permissible, relying in large part on the plain language of the exception, which expressly permits law enforcement agencies to withhold records developed or received by those agencies in the course of an investigation. We have no basis to conclude otherwise with respect to your particular request. Ms. Miller represents to this office the records were developed by the FPD—a law enforcement agency—and directly relate to its investigation of the vehicular pursuit occurring on June 12, 2023. It also appears that the records contain “strategic or tactical information used in law enforcement training” since they include details about the pursuit procedures employed by the FPD during the incident. Consequently, we find that the requested records may be properly withheld under § 84-712.05(5).<sup>4</sup>

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<sup>3</sup> See, e.g., *File No. 21-R-141; Omaha Police Department; Amanda Coleman, Petitioner* (November 3, 2021); *File No. 21-R-139; Nebraska State Patrol; Chris Dunker, Lincoln Journal Star, Petitioner* (October 20, 2021); *File No. 21-R-115; Omaha Police Department; Christopher Fielding, Petitioner* (June 10, 2021); *File No. 19-R-130; City of Omaha Police Department; David Earl, KETV NewsWatch 7, Petitioner* (December 20, 2019); *File No. 19-R-106; Omaha Police Department; Reginald L. Young, Petitioner* (January 31, 2019); and *File No. 18-R-106; Lincoln Police Department; Juanita Phillips, Petitioner* (March 22, 2018). You may access our dispositions for these files at <https://ago.nebraska.gov/disposition-letters>.

<sup>4</sup> While not relied on by the City, § 29-3506 of the Security, Privacy, and Dissemination of Criminal History Information Act provides an additional basis to withhold the requested records by expressly excluding “intelligence or investigative information” from the definition of criminal history record information. See *BH Media Group*, 305 Neb. at 796, 943 N.W.2d at 245 (“We concluded that ‘[t]he information requested by the relator consists of records concerning an investigation of him and is specifically excluded from review under § 29-3506 as well as § 84-712.05(5)[.]’” quoting *State ex rel. Sileven v. Spire*, 243 Neb. 451, 457, 500 N.W.2d 179, 183 (1993)).

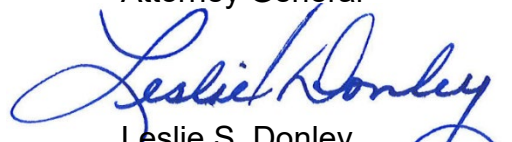
## CONCLUSION

For the reasons explained above, we believe that the City of Fremont may continue to withhold its investigatory records pertaining to the incident listed in your request under the exception to disclosure in § 84-712.05(5). Since you have not been unlawfully denied access to public records, no further action by this office is necessary and we are closing our file.

If you disagree with the analysis we have set out above, you may wish to discuss with legal counsel what additional remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Molly J. Miller (via email only)

49-3273-30