



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
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October 26, 2023

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

RE: *File No. 23-R-133; City of Fremont; Jeff Forward, The Fremont Tribune, Petitioner*

Dear Mr. Forward:

This letter is in response to your correspondence emailed to the Attorney General's Communications Director, Suzanne Gage, on October 11, 2023. You are appealing the denial by the City of Fremont (City) of your request for "a complaint filed by a resident of the city of Fremont against the Fremont City Council president, Mr. Mark Jensen." On October 13, we forwarded your petition to Molly J. Miller, City Attorney's Office, and requested a response to your petition. We received Ms. Miller's response on October 16. We have now considered your petition 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 October 5, 2023, you submitted a public records request to the City requesting "the complaint form filed against Council President Mark Jensen by a member of the public named Deb Brunmeier." Ms. Miller responded on behalf of the City on October 11, stating, in part, that "[t]he records sought, in the request set forth above, are being withheld by the City of Fremont pursuant to Neb. Rev. Stat. § 84-712.05(5), as those records are an exception to production of documents requested under the Nebraska Public Records statute."

You subsequently filed your petition with this office, asserting the following:

The city has not given a reason for the withholding of the document—which as our PRR states is a complaint form filed against Mr. Jensen over his actions on Sept. 26, 2023, during a city council meeting.¹ To our knowledge at the newspaper, this document is NOT a criminal complaint and hence should be public document releasable to the media and general public who may seek it.

In response, Ms. Miller disputes your claim that the City did not provide a statutory basis to withhold the requested record as the citation was clearly noted on page two of the denial letter. She indicates that you requested a “citizen complaint,” which is one of the records expressly enumerated in § 84-712.05(5), i.e., “records [which] 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” (Emphasis added.) Ms. Miller informs us that the complaint was made by a Fremont citizen “against a sitting council member for various perceived violations of the Fremont Municipal Code.” She further informs us that the complaint was addressed to the City police chief and the attorney who prosecutes violations of City code. Ms. Miller asserts that the complaint is the type of record the exception is designed to protect, and that compelling disclosure “may cause citizens to be less willing to come forward or cooperate with law enforcement during investigations”

In addition, Ms. Miller informs us that you obtained a copy of the complaint from the citizen involved, and provided this office a copy of your October 12, 2023, email to Mr. Jensen acknowledging receipt. She points out that while your petition asserts that the “document is NOT a criminal complaint,” and thus should be released, you state in your email that the complaint “seem[s] to indicate [complainants] are seeking [a] misdemeanor criminal charge” Consequently, Ms. Miller asserts that your petition “seems to be moot and not factually based.”

DISCUSSION

This office has previously addressed two appeals submitted by you in which we concluded that the City properly withheld the requested records under the exception in § 84-712.05(5).² The 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,

¹ For the record, the undersigned informed you by email on October 13 that the City had cited Neb. Rev. Stat. § 84-712.05(5) as its statutory basis to withhold the complaint.

² See *File No. 23-R-123; City of Fremont; Jeff Forward*, The Fremont Tribune, *Petitioner*, issued July 6, 2023 (City’s pursuit policy); and *File No. 23-R-124; City of Fremont; Jeff Forward*, The Fremont Tribune, *Petitioner*, issued July 10, 2023 (criminal incident report regarding June 12, 2023, pursuit).

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 training³

Our conclusion with respect to the petition filed here is no different. Ms. Miller has represented to this office that the complaint you requested was submitted by a Fremont citizen, addressed to the chief of police and prosecutor and alleges violations of the Fremont Municipal Code by a member of the Fremont City Council. Since “citizen complaints” are expressly enumerated in § 84-712.05(5), we find the City’s reliance on the exception to withhold the requested record appropriate. Finally, to be clear, any claim that the City failed to provide a statutory basis to withhold the requested complaint in violation of Neb. Rev. Stat. § 84-712.04(1)(a) is without merit.

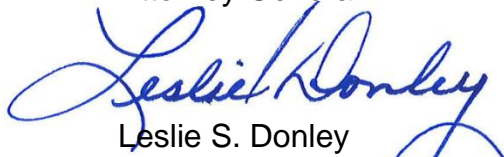
CONCLUSION

Based on the foregoing, we find that the City’s withholding of the requested complaint under the exception to disclosure in § 84-712.05(5) was appropriate. 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)
49-3374-30

³ As we previously informed you, withholding records under any of the categories of records listed in § 84-712.05 is at the discretion of the public body. Also, the ability to withhold records under § 84-712.05 is waived if the records have been “publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties”