

October 4, 2021

Nebraska Attorney General's Office
2115 State Capitol
P.O. Box 98920
Lincoln, Nebraska 68509

Re: Public Records Statutes

Dear Nebraska Attorney General's Office:

I am a Nebraska resident employed as a reporter at the Lincoln Journal Star newspaper, and as such, conduct newsgathering on local and state government agencies using various methods, including the Nebraska Public Records Statutes (Neb. Rev. Stat. § 84-712). Please consider this letter to be a petition made by the Journal Star pursuant to Neb. Rev. Stat. § 84-712.03(b) for the Attorney General to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has right to withhold the record from public inspection.

On September 24, 2021, the Lincoln Police Department announced the arrest of a former evidence technician with the Nebraska State Patrol on suspicion of stealing \$1.2 million in drugs from the Troop H Evidence Facility. Andrew Wegley, another reporter employed by the Journal Star, interviewed Nebraska State Patrol Col. John Bolduc and Public Information Officer Cody Thomas on September 27, 2021, about the case, as well as about the Patrol's policies and procedures for handling evidence.

During that interview, Wegley requested a copy of an audit report of the Nebraska State Patrol's Evidence Facility. Bolduc recommended Wegley file a public records request for the audits, saying while some of those documents may currently be investigatory in nature, others could be available for release. Thomas told Wegley he anticipated public records requests would be filed for this or similar information, and indicated Patrol leaders would work with the legal department to release them: "I don't want to make any promises, but as long as we can do it in a way that doesn't compromise LPD's investigation, I think the colonel's comfortable with that, as long as we get the legal sign off,"

Bolduc concurred with Thomas: "Yeah, the most recent annual (audit), I'm thinking that's in play here with this prosecution, but certainly previous annuals, there may be some room to work along those lines." A complete transcript of this portion of the interview is available upon request.

Following Bolduc's recommendation, and working with Wegley, I filed a public records request with the Nebraska State Patrol on September 28, 2021 seeking 1. "Any audit of the Nebraska State Patrol Troop H Evidence Facility's inventory completed between 2015-2021." 2. "Any quarterly report of the Nebraska State Patrol Troop H Evidence Facility's inventory completed between 2015-2021." And 3. "The most up-to-date policy or protocol training materials provided to evidence technicians employed at the Troop H Evidence Facility."

The Patrol denied my request seeking Troop H evidence audits, citing Neb. Rev. Stat. § 84-712.05(5), claiming the records sought are investigatory in nature. The Patrol also issued a partial denial of my request for policy or protocol training materials under the same statute. The PDF

record provided to me was 23 pages long (see attached). The first page outlined the purpose of the “Property Management of In-Custody Evidence & Found/Recovered Property” and provided an introductory sentence stating “It is the policy of the Nebraska State Patrol that all in-custody property will be safeguarded and accounted for according to the following procedures. The remainder of the first page, and the next 20 pages, were redacted completely. The final two pages are redaction logs, presumably for internal use.

Neb. Rev. Stat. § 84-712.05(5) allows public entities to withhold records that “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.” The information requested – the audits of evidence storage facilities and the policies or procedures used by evidence technicians employed by the Patrol – do not relate to the investigation of any particular case, and would not identify any individuals, or could be lightly redacted to protect that information.

Also, the near complete redaction of the policy document appears to be an overly broad interpretation of what can be considered “strategic or tactical information used in law enforcement training.” In *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009), the Nebraska Supreme Court found “Nebraska courts must narrowly construe statutory exemptions shielding public records from disclosure.” The redaction seems to suggest that nearly all of the policies and procedures followed by evidence technicians employed by the Nebraska State Patrol are strategic or tactical in nature. The redaction does not narrowly construe the exemption granted in Neb. Rev. Stat. § 84-712.05(5). Moreover, the Nebraska Supreme Court has routinely endorsed reasonable redaction to facilitate disclosure of public records, such as in *Kimball*, and just last year in *State ex. rel. BH Media Group, Inc. v Frakes*. The redactions here amount to a refusal to comply with the law.

Your office has regularly stated Nebraska’s Public Records Statutes should be liberally construed. The Lincoln Journal Star asks you to exercise your authority to find records responsive to the September 28, 2021, request for the Nebraska State Patrol’s evidence audits and policies and training materials for evidence technicians available for public inspection.

Please feel free to contact me with any questions.

Sincerely,
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Star

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