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April 20, 2017

Gary & Sandi Gridley
[REDACTED]

RE: *File No. 17-R-121; Wymore Police Department; Gary & Sandi Gridley, Petitioners*

Dear Mr. and Mrs. Gridley:

This letter is in response to your correspondence dated and received by this office on April 5, 2017, in which you seek our assistance in obtaining the "investigative police report" pertaining to the death of your brother and brother-in-law, Dale E. Pyle, from the Wymore Police Department. We considered your correspondence to be a petition for review under Neb. Rev. Stat. § 84-712.03 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2016) ("NPRS"). Our findings in this matter are set forth below.

FACTS

According to your petition, on March 24, 2017, Sandi wrote to the chief of police of the Wymore Police Department and requested the following:

[A] copy of all Police reports regarding the shooting of my brother Dale E. Pyle on September 2, 2016. I would like a copy of the primary investigation on the night of the shooting and all related information in regards to this and a copy of the report on the investigation after it was reopened as the family provided additional information.

Your petition includes the chief's written response to your request, also dated March 24, 2017. In his response, Chief Jay Welch indicates that he was providing you a copy of the incident report relating to your brother's death. However, with respect to the investigative report, Chief Welch stated that

[i]t is the policy of the Wymore Police Department and the City of Wymore not to release law enforcement investigative reports. I have spoken with the City Attorney, and he agrees that under Nebraska Revised Statute § 84-712.05(5) that this is the correct policy.

In your petition, you express serious concerns about how the Wymore Police Department handled the investigation of your brother's death.¹ You assert that "there are many unanswered questions and feel we are justified in not only obtaining the police reports, but feel this investigation should be reopened and investigated by more competent authorities." You have asked us to help you get a copy of the investigative police report, among other things.

DISCUSSION

Neb. Rev. Stat. § 84-712 sets out the basic rule for access to public records in Nebraska. That statute provides, in pertinent part:

Except as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(Emphasis added.) "Public records" are defined as follows:

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

¹ Neb. Rev. Stat. § 84-712 of the NPRS does not require any showing by a person requesting access to public records of the reason for his or her review of those records. See *State ex rel. Sileven v. Spire*, 243 Neb. 451, 500 N.W.2d 179 (1993). We note that your correspondence to this office contains considerable information as to why you believe you should receive a copy of the police report. However, this information is not relevant in determining whether the Wymore Police Department complied with the NPRS, and we do not consider it in our analysis.

record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (2014) (emphasis added). Thus, in those instances where records requested under the NPRS are exempt from disclosure by statute, there is no right of access.

Although the Nebraska Public Records Statutes 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 of the NPRS is comprised of twenty categories of records that may be kept confidential from the public at the discretion of the agency involved. 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).

In the present case, the Wymore Police Department has claimed the exception set out in subsection (5) of § 84-712.05 as its basis for denying you access to the requested police report. 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

On several previous occasions, this office has considered petitions in which the records sought consisted of the investigatory records of law enforcement agencies.² In

² See, e.g., File No. 16-R-134, *University of Nebraska-Lincoln [Police Department], Ralph W. Edwards, Petitioner* (September 28, 2016); File No. 16-R-102, *Omaha Police Department, KETV, Petitioner* (February 8, 2016); File No. 15-R-145, *Nebraska State Patrol, Joshua Renth, Petitioner* (November 2, 2015); File No. 15-R-130, *City of Omaha Police and Fire Departments, General Electric Railcar Services Corp., Petitioner* (August 3, 2015); File Nos. 15-R-110 and 15-R-112, *Omaha Police Department, Cathy Beeler, KETV Newswatch 7, Petitioner* (April 8, 2015).

each of these instances, this office determined that the agencies involved could properly withhold the requested records under the exception in § 84-712.05(5). Upon review, we find nothing in this petition that would warrant a different result.

As in our previous reviews, we considered the language of the exception in conjunction with the records sought. 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 meaning of § 84-712.05(5) indicates that law enforcement agencies may withhold records developed or received by those agencies when the records relate to investigations of persons, institutions or businesses. The term "law enforcement" is defined as "1. The detection and punishment of violations of the law . . . [and] 3. Police officers and other members of the executive branch of government charged with carrying out and enforcing the criminal law." Black's Law Dictionary 714 (abridged 7th ed. 2000). Under this definition, the Wymore Police Department would constitute a law enforcement agency. The Wymore Police Department prepared the report at issue in the course of its investigation into Mr. Pyle's death. Consequently, in our view, the requested report falls squarely within the claimed exception.³

Although we have determined that the investigative police report may be withheld by the Wymore Police Department under the exception in § 84-712.05(5), the manner in which Chief Welch responded to you was deficient under the NPRS. In that regard, Neb. Rev. Stat. § 84-712.04 requires a public body to provide the following information, in writing, any time it denies a requester any rights granted to him or her under §§ 84-712 to 84-712.03:

- (a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;
- (b) The name of the public official or employee responsible for the decision to deny the request; and

³ We do not believe that further analysis is necessary when the facts presented involve a police department and a report produced by the department as a result of its investigation into a crime or, as in the present case, a death. *Cf. 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), where the court articulated standards to determine whether records generated by the department in the course of audits of nursing homes were "investigatory records" which could be lawfully withheld under § 84-712.05(5).

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

Neb. Rev. Stat. § 84-712.04 (2014). Here, while Chief Welch's response did include a cite to the particular statute and subsection relied on as authority for the denial, there is no description of the contents of the records, the name of the individual responsible for the decision to deny your request, or the required notification of your right to administrative or judicial review. Consequently, we will advise Chief Welch, by sending a copy of this disposition letter to him and City Attorney Andrew Carothers that, in the future, strict adherence to the § 84-712.04 is required in the event access to public records is denied by his department.

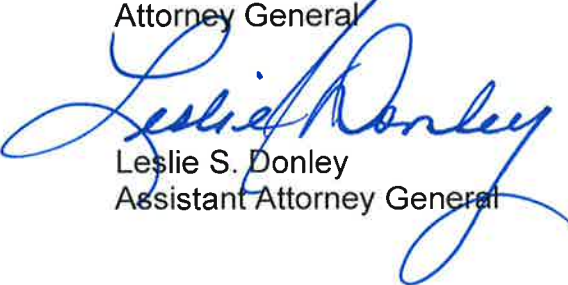
CONCLUSION

For the reasons explained above, we believe that the requested investigative police report belonging to the Wymore Police Department may be lawfully withheld under the exception to disclosure in § 84-712.05(5). Since we have concluded that the Wymore Police Department did not unlawfully deny your records requests, no further action by this office is necessary. Accordingly, we are closing this file.

If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Chief Jay Welch
City Attorney Andrew Carothers