



STATE OF NEBRASKA
Office of the Attorney General

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September 29, 2021

Via email at [REDACTED]
Matthew Sutter

RE: *File No. 21-R-133; City of Plattsmouth; Matthew Sutter, Petitioner*

Dear Mr. Sutter:

We are writing in response to your petition received by this office on September 14, 2021, in which you requested our review of the denial by the City of Plattsmouth ("City") of your August 27, 2021, public records request. On September 21, 2021, we forwarded your petition to City Attorney Stephen Q. Preston, and on September 22, Mr. Preston provided us a response on behalf of the City. We considered your petition and the City's response under the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020). Our findings in this matter are set forth below.¹

RELEVANT FACTS

On August 27, 2021, you emailed a public records request to the City Clerk, Sandra J. Meyer, seeking "the 'time records' of Plattsmouth Police Department employee, David Walker, for the following period: April 1, 2020 – July 15, 2021. This includes all records that show Mr. Walker's clock in/clock out times and/or daily hours worked for the time period above." Ms. Meyer responded to your request by letter dated September 1, 2021. She indicated that the City had responsive records consisting of "biweekly time sheets for

¹ We note that your petition sets out additional background and the reason you are seeking these particular records. For your information, "[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) ["*BH Media*"]. Accordingly, we do not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

Detective Walker for the period covered by your request.” However, Ms. Meyer indicated that the time sheets “contain[ed] personal information regarding personnel of the City of Plattsmouth other than salaries and routine directory information” and, accordingly, would be “withheld on the basis of the exception to disclosure in Neb. Rev. Stat. § 84-712.05(7).”

You believe this is an incorrect interpretation of the exception. You assert that the exception “does not cover work times of publicly paid employees,” and that “the clock in/clock out times for Mr. Walker are public record, and should be provided to any requestor upon request.” You further assert that the City could redact “[a]ny personnel information contained in the requested time sheets,” except for what you have requested.

In the City’s response, Mr. Preston acknowledges that the requested time sheets are public records under the broad definition of public records set out in § 84-712.01(1). However, he points to the plain and ordinary meaning of the word “personal” in the text of § 84-712.05(7) in support of the City’s determination to withhold the records: “The hours worked and other information which Detective Walker, a City employee, added to the City’s template biweekly time sheets relates specifically to him, and the Time Sheets therefore constitute personal information about City personnel for the purposes of Neb. Rev. Stat. § 84-712.05(7).” Mr. Preston further points to the Nebraska Supreme Court case *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 885 N.W.2d 44 (2016), to support the City’s withholding of the requested time sheets. Mr. Preston noted that “[i]n *Steckelberg*, the Court rejected the petitioner’s argument that ‘personal information’ should be narrowly construed as limited to the contents of an employee’s personnel file, and the Court instead favored a broader definition dictated by the plain and ordinary meaning of the statutory language”

DISCUSSION

The basic rule for access to public records is set out in Neb. Rev. Stat. § 84-712(1) (2014). That provision states:

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” in Nebraska “include all records and documents, regardless of physical form, of or belonging to” governmental entities in the state,

“[e]xcept when any other statute expressly provides that particular information or records shall not be made public.” Neb. Rev. Stat. § 84-712.01(1) (2014). Thus, there is no absolute right to access public records in those instances where records are exempt from disclosure by statute. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. *BH Media*, 305 Neb. at 788, 943 N.W.2d at 240 (2020) ; *Aksamit Resource Mgmt. LLC v. Neb. Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

Section 84-712.05 of the NPRS contains several categories of public records that may be withheld at the discretion of the records custodian “unless 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 whether the exception in § 84-712.05(7), pertaining to “[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information,” provides a basis to withhold the time sheets of a public employee.

“Statutory interpretation begins with the text, and the text is to be given its plain and ordinary meaning. An appellate court will not resort to interpretation to ascertain the meaning of words which are plain, direct, and unambiguous.” *State ex rel. Peterson v. Shively*, 310 Neb. 1, 14, 963 N.W.2d 508, 518 (2021). The plain and ordinary reading of § 84-712.05(7) indicates that public bodies may lawfully withhold *personal* information regarding its personnel, except for salary and routine directory information. In this context, “personal” may be defined as “2. private; individual; affecting individuals; peculiar or proper to a certain person or to private actions or character” Webster’s New Universal Abridged Dictionary 1338 (2nd ed. 1983).

We have considered your assertion that the work time for public employees is not covered by the exception, and that the times Mr. Walker clocks in or out should be available to anyone upon request. We disagree. The information you seek is not salary information nor does it constitute routine directory information, which we have generally construed to include an employee’s name, job title, work telephone number and address and dates of hire and separation.² The time sheets contain information which is personal to Mr. Walker and, on that basis, we believe fall under the exception in § 84-712.05(7).

Our conclusion in this respect is consistent with our disposition in File No. 19-R-129.³ There we considered whether the Little Blue Natural Resources District (“NRD”) could withhold the time cards and time logs of NRD staff, including its manager, under § 84-712.05(7). Relying on the plain language of the exception and the language broadly

² See the Classified System Personnel Rules—Chapter 12 – Personnel Records, Title 273, *Nebraska Administrative Code*, Chapter 12, § 001.01 (October 30, 2006).

³ See *File No. 19-R-129; Little Blue Natural Resources District; Kevin Kissinger, Petitioner* (December 5, 2019), accessible at <https://ago.nebraska.gov/disposition-letters>.

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construing the exception in *Steckelberg*,⁴ we concluded that the time sheets and logs could be lawfully withheld under the exception. There is nothing in your request to the City or petition to this office that would warrant a different result from the conclusion previously reached by this office in File No. 19-R-129.

CONCLUSION

For the reasons explained above, we conclude that the City of Plattsmouth may withhold the requested time sheets under Neb. Rev. Stat. § 84-712.05(7). Since the City did not unlawfully deny your records request, no further action by this office is warranted. Accordingly, we are closing this file.

If you disagree with our analysis set out above, you may wish to review the judicial remedies available to you under § 84-712.03.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Stephen Q. Preston

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⁴ The Nebraska Supreme Court determined that the State Patrol could rely on § 84-712.05(7) to withhold certain records relating to interview score sheets, notes and comments, holding that

[Section] 84-712.05(7) exempts “[p]ersonal information in records regarding personnel.” The district court found that the information in the records sought did contain personal information. And the information was about employees, otherwise known as personnel, of the State Patrol. There is no requirement in § 84-712.05(7) that in order to be exempt, the records must be kept within an employee’s personnel record, as used as a term of art; *the records need only be personal information about personnel, defined as persons employed by an organization.*

Steckelberg, 294 Neb. at 849-850, 885 N.W.2d at 50 (internal citations omitted) (emphasis added).