

STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
FAX (402) 471-3297 OR (402) 471-4725

**DOUGLAS J. PETERSON**  
ATTORNEY GENERAL

**LESLIE S. DONLEY**  
ASSISTANT ATTORNEY GENERAL

October 12, 2022

Matthew Pitzer, 31209-047  
Unit C  
FCI Sandstone  
P.O. Box 1000  
Sandstone, MN 55072

RE: *File No. 22-R-145; Douglas County Department of Corrections; Matthew Pitzer, Petitioner*

Dear Mr. Pitzer:

This letter is in response to your public records petition received by this office on September 9, 2022, in which you sought our assistance in obtaining certain records from the Douglas County Department of Corrections ("DCDC"). We considered your petition under the provisions of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020, Supp. 2021), amended 2022 Neb. Laws LB 876 and LB 1246. In accordance with our normal practice, we forwarded a copy of your petition to Deputy County Attorney William E. Rooney III, and requested a response. On September 26, we wrote to you advising that our disposition in this matter would be delayed pending receipt of the DCDC's response. We have now completed our review of this matter and our findings are set forth below.

By letter dated April 13, 2022, you requested the following records from the DCDC:

1. Visitor logs;
2. Phone logs;
3. Any phone recording (cd please); and
4. Log of any Video court appearances

The timeframe for your request was the period of your incarceration at the facility, i.e., "1/10/2019 to 5/15/2019, 2/14/2020 to 4/30/2020 and 12/31/2020 to 4/30/2020 [*sic*]."

Candice Gaines, DCDC Records and Accounting Manager, responded to your request by letter dated April 20, 2022, stating that “[a] court order would be needed for requests of this nature,” and that records would be provided upon receipt of such order.

You assert in your petition that the requested records should be provided to you because they “relate to [your] stay at the county jail and are kept in the normal course of business for the County jail . . . .” You state that the records “are transactions generated by my time in custody there.” You further claim that the DCDC’s request for a court order “is the wrong stance” and violates your rights under § 84-712 *et seq.*

In his response, Mr. Rooney confirms that the DCDC has records responsive to items 1-3 of your request for the timeframes specified. With respect to your request for “[l]og of any Video court appearances,” he states that the DCDC does not possess or maintain such a log and to the extent you seek video recordings of court appearances, the DCDC is not the custodian of those records. Mr. Rooney asserts that the exception to disclosure in Neb. Rev. Stat. § 84-712.05(9) provides a basis to withhold the logs and recordings. That exception pertains to

[i]nformation solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law[.]

Mr. Rooney also calls our attention to the Attorney General’s disposition in *File No. 11-R-107; City of Omaha Police Department and Douglas County Department of Corrections; Jarvis Young*, dated March 17, 2011 [“*Young*”]. In *Young*, we considered whether phone logs and phone recordings could be withheld by the Omaha Police Department (“OPD”) and the DCDC. Our analysis in *Young* noted several reasons why the requested records were either not produced or withheld by the public bodies involved.<sup>1</sup> However, notwithstanding these reasons, we determined that § 84-712.05(9) provided a basis to withhold records, stating:

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<sup>1</sup> For example, the OPD asserted that it was not the lawful custodian of phone records, and to the extent it had any responsive records, they were received in the context of an investigation and could be withheld under § 84-712.05(5). The DCDC asserted that phone records were part of an inmate file, which is confidential under the Jail Standards Board/Standards for Jail Facilities, Title 81, *Nebraska Administrative Code*, Chapter 3, § 003.

In the alternative, if the record belongs to the [DCDC], the [DCDC] may still withhold the phone records you have requested. The sole reason that the [DCDC] maintains these records is for the safety and security of the facility. Under Neb. Rev. Stat. § 84-712.05(8),<sup>2</sup> information pertaining to the security of public property and persons on or within public property may be withheld under the [NPRS]. We believe the records you seek fall within this category of records which may be lawfully withheld from public disclosure by the custodian.


As we have previously informed you,<sup>3</sup> your access to public records is 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). Upon review, and consistent with our conclusion in *Young*, we find that § 84-712.05(9) is applicable to the logs and phone recordings you seek, and may be withheld at the discretion of the DCDC.

### CONCLUSION

Based on the foregoing, we conclude that the DCDC may continue to withhold the requested logs and recordings under the exception in § 84-712.05(9). Since no further action by this office is necessary, we are closing this file.<sup>4</sup> If you disagree with the conclusion reached above, you may wish to consider the additional remedies available to you under the NPRS.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: William E. Rooney III

49-3070-30

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<sup>2</sup> Renumbered as subsection (9) due to the passage of 2022 Neb. Laws LB 1246, § 5 (effective July 21, 2022).

<sup>3</sup> See *File No. 22-R-151; Douglas County Attorney's Office; Matthew Pitzer, Petitioner*, dated October 7, 2022, in which we concluded that the county attorney could withhold the requested Brady/Giglio List under § 84-712.05(5) and (8).

<sup>4</sup> This disposition only addresses your ability to obtain the logs and recordings under the NPRS. We express no view as to whether you have other avenues to obtain such information.