

COMPILATION OF STATUTES
REGARDING THE
DEPARTMENT OF NATURAL RESOURCES

PUBLIC RECORDS LAW

- Includes: I. Chapter 84, Article 7: Nebraska Public Records Law
II. *Neb. Rev. Stat.* § 28-106: Classification of Penalties

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CHAPTER 84

ARTICLE 7

PUBLIC RECORDS LAW

84-712. Public records; free examination; memorandum and abstracts; copies; fees.

(1) 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.

(2) Copies made by citizens or other persons using their own copying or photocopying equipment pursuant to subdivision (1)(a) of this section shall be made on the premises of the custodian of the public record or at a location mutually agreed to by the requester and the custodian.

(3)(a) Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies. This section shall not be construed to require a custodian to copy any public record that is available to the requester on the custodian's web site on the Internet. The custodian of the public record is required to provide the location of the public record on the Internet to the requester. If the requester does not have reasonable access to the Internet due to lack of computer, lack of Internet availability, or inability to use a computer or the Internet, the custodian shall produce copies for the requester.

(b) Except as otherwise provided by statute, the public body, public entity, or public official which is the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual added cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual added cost of making the copies available shall not exceed the amount of the reasonably calculated actual added cost of the photocopies, which may include a reasonably apportioned cost of the supplies, such as paper, toner, and equipment, used in preparing the copies, as well as any additional payment obligation of the custodian for time of contractors necessarily incurred to comply with the request for copies, (ii) for printouts of computerized data on paper, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of computer run time and the cost of materials for making the copy, and (iii) for electronic data, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of the computer run time, any necessary analysis and programming by the public body, public entity, public official, or third-party information technology services company contracted

to provide computer services to the public body, public entity, or public official, and the production of the report in the form furnished to the requester.

(c) The actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first four cumulative hours of searching, identifying, physically redacting, or copying. A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of four cumulative hours, since that large a request may cause some delay or disruption of the other responsibilities of the custodian's office, except that the fee for records shall not include any charge for the services of an attorney to review the requested public records seeking a legal basis to withhold the public records from the public.

(d) State agencies which provide electronic access to public records through a portal established under section 84-1204 shall obtain approval of their proposed reasonable fees for such records pursuant to sections 84-1205.02 and 84-1205.03, if applicable, and the actual added cost of making the copies available may include the approved fee for the portal.

(e) This section shall not be construed to require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record.

(f) If copies requested in accordance with subdivision (1)(b) of this section are estimated by the custodian of such public records to cost more than fifty dollars, the custodian may require the requester to furnish a deposit prior to fulfilling such request.

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request. The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request. If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request. The four business days shall be computed by excluding the day the

request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

Source: R.S.1866, c. 44, § 1, p. 297; R.S.1913, § 5595; C.S.1922, § 4902; Laws 1925, c. 146, § 1, p. 381; Laws 1927, c. 193, § 1, p. 551; C.S.1929, § 84-712; R.S.1943, § 84-712; Laws 1961, c. 454, § 3, p. 1383; Laws 1979, LB 86, § 1; Laws 2000, LB 628, § 1; Laws 2012, LB719, § 6; Laws 2013, LB363, § 1.

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or the other person interested in the examination of the public records; (2) the document sought is a public record as defined by section 84-712.01; and (3) the requesting party has been denied access to the public record as guaranteed by this section. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Dockets of justice containing entry of judgments are public records. *State ex rel. Newby v. Ellsworth*, 61 Neb. 444, 85 N.W. 439 (1901).

Party was not entitled to inspection of certified copy of court reporter's record before same is offered in evidence. *Spielman v. Flynn*, 19 Neb. 342, 27 N.W. 224 (1886).

Any person interested may examine records without charge, and fee book of clerk of court is public record. *State ex rel. Griggs v. Meeker*, 19 Neb. 106, 26 N.W. 620 (1886).

Numerical indexes of instruments concerning title to real estate kept by county clerk are public records. *State ex rel. Miller v. Sovereign*, 17 Neb. 173, 22 N.W. 353 (1885).

The Nebraska Department of Correctional Services had no obligation to transport an inmate in its custody to an office where a particular record was located to examine the record. *Russell v. Clarke*, 15 Neb. App. 221, 724 N.W.2d 840 (2006).

84-712.01. Public records; right of citizens; full access; fee authorized.

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

(2) When a custodian of a public record of a county provides to a member of the public, upon request, a copy of the public record by transmitting it from a modem to an outside modem, a reasonable fee may be charged for such specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service. This subsection shall not be construed to require a governmental entity to acquire computer capability to generate public records in a new or different form when that new form would require additional computer equipment or software not already possessed by the governmental entity.

(3) Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full right to know of and have full

access to information on the public finances of the government and the public bodies and entities created to serve them.

Source: Laws 1961, c. 454, § 2, p. 1383; Laws 1979, LB 86, § 2; Laws 1994, LB 1275, § 12; Laws 2000, LB 628, § 2.

If each branch of government could shield its records simply by appealing to the fact that they were created in the course of any number of essential branch functions, then the protections of the public interest embodied in the public records statutes would be a nullity. *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 894 N.W.2d 788 (2017).

Under subsection (1) of this section, the Judicial Branch Education advisory committee's unwritten policy of keeping its records confidential did not, in light of section 24-205.01, governing the committee's power to develop standards and policies for review by the Nebraska Supreme Court, render such records confidential under the statutory exception to the public records laws for records not to be made public according to this section, although subdivision (2)(a) of section 24-205.01 contemplated promulgation of rules regarding the confidentiality of Judicial Branch Education records, where no such rules had been adopted by the Nebraska Supreme Court. *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 894 N.W.2d 788 (2017).

Presentence reports are not "public records" under this section. *State ex rel. Unger v. State*, 293 Neb. 549, 878 N.W.2d 540 (2016).

A four-part functional equivalency test is the appropriate analytical model for determining whether a private entity which has an ongoing relationship with a governmental entity can be considered an agency, branch, or department of such governmental entity within the meaning of subsection (1) of this section, such that its records are subject to disclosure upon request under Nebraska's public records laws. The factors to be considered in applying this test are (1) whether the private entity performs a governmental function, (2) the level of governmental funding of the private entity, (3) the extent of government involvement with or regulation of the private entity, and (4) whether the private entity was created by the government. *Frederick v. City of Falls City*, 289 Neb. 864, 857 N.W.2d 569 (2015).

A party seeking a writ of mandamus under section 84-712.03 has the burden to satisfy three elements: (1) The

requesting party is a citizen of the state or other person interested in the examination of the public records; (2) the document sought is a public record as defined by this section; and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Subsection (1) of this section does not require a citizen to show that a public body has actual possession of a requested record. Subsection (3) of this section requires that the "of or belonging to" language be construed liberally; this broad definition includes any documents or records that a public body is entitled to possess—regardless of whether the public body takes possession. The public's right of access should not depend on where the requested records are physically located. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subsection (1) of this section, the reference to "data" in the last sentence shows that the Legislature intended public records to include a public body's component information, not just its completed reports or documents. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under this section, requested materials in a private party's possession are public records if the following requirements are met: (1) The public body, through a delegation of its authority to perform a government function, contracted with a private party to carry out the government function; (2) the private party prepared the records under the public body's delegation of authority; (3) the public body was entitled to possess the materials to monitor the private party's performance; and (4) the records are used to make a decision affecting public interest. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Records of deaths that occurred at a state-run mental institution, indicating the place of burial, are public records as defined by this section. *State ex rel. Adams Cty. Historical Soc. v. Kinyoun*, 277 Neb. 749, 765 N.W.2d 212 (2009).

84-712.02. Public records; claimants before United States Department of Veterans Affairs; certified copies free of charge.

When it is requested by any claimant before the United States Department of Veterans Affairs or his or her agent or attorney that certified copies of any public record be furnished for the proper and effective presentation of any such claim in such department, the officer in charge of such public records shall furnish or cause to be furnished to such claimant or his or her agent or attorney a certified copy thereof free of charge.

Source: Laws 1961, c. 454, § 4, p. 1384; Laws 1991, LB 2, § 30.

84-712.03. Public records; denial of rights; remedies.

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

(a) File for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of the public record can be served; or

(b) Petition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections, including whether the fees estimated or charged by the custodian are actual added costs or special service charges as provided under section 84-712. This determination shall be made within fifteen calendar days after the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply. If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (i) bring suit in the trial court of general jurisdiction or (ii) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days after its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

(2) In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses, may be permitted to view the records, subject to necessary protective orders.

(3) Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the trial docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.

Source: Laws 1961, c. 454, § 5, p. 1384; Laws 1977, LB 39, § 316; Laws 1979, LB 86, § 3; Laws 2000, LB 628, § 3; Laws 2013, LB 363, § 2; Laws 2018, LB 193, § 93.

A party seeking a writ of mandamus under this section has the burden to satisfy three elements: (1) The requesting party is a citizen of the state or other person interested in the examination of the public records; (2) the document sought is a public record as defined by section 84-712.01; and (3) the requesting party has been denied access to the public record as guaranteed by section 84-712. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under this section, the public body opposing disclosure must show by clear and convincing evidence that section 84-712.05 or 84-712.08 exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

When a writ of mandamus is sought pursuant to this section, the party seeking the writ must first show (1) that the party is a citizen of the state or other person interested in the examination of the public records, (2) that the document sought by the party is a public record as defined by section 84-712.01, and (3) that the party has been denied the access to the public record guaranteed by section 84-712; thereafter, if the public body holding the record wishes to oppose the issuance of a writ of mandamus, the public body must show, by clear and convincing evidence, that the public record at issue is exempt from the disclosure requirement under one of the exceptions provided by section 84-712.05 or section 84-712.08. *State ex rel. Neb. Health Care Assn. v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

84-712.04. Public records; denial of rights; public body; provide information.

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(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

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

(2) Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

Source: Laws 1979, LB 86, § 4; Laws 1983, LB 3, § 1.

84-712.05. Records which may be withheld from the public; enumerated.

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:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on February 1, 2013, and regulations adopted thereunder;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(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:

(a) Relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person; or

(b) Relating to the cause of or circumstances surrounding the death of an employee arising from or related to his or her employment if, after an investigation is concluded, a family member of the deceased employee makes a request for access to or copies of such records. This subdivision does not require access to or copies of informant identification, the names or identifying information of citizens making complaints or inquiries, other information which would compromise an ongoing criminal investigation, or information which may be withheld from the public under another provision of law. For purposes of this subdivision, family member means a spouse, child, parent, sibling, grandchild, or grandparent by blood, marriage, or adoption;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information 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;

(9) Information that relates details of physical and cyber assets of critical energy infrastructure or critical electric infrastructure, including (a) specific engineering, vulnerability, or detailed design information about proposed or existing critical energy infrastructure or critical electric infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy, (ii) could be useful to a person in planning an attack on such critical infrastructure, and (iii) does not simply give the general location of the critical infrastructure and (b) the identity of personnel whose primary job function makes such personnel responsible for (i) providing or granting individuals access to physical or cyber assets or (ii) operating and

maintaining physical or cyber assets, if a reasonable person, knowledgeable of the electric utility or energy industry, would conclude that the public disclosure of such identity could create a substantial likelihood of risk to such physical or cyber assets. Subdivision (9)(b) of this section shall not apply to the identity of a chief executive officer, general manager, vice president, or board member of a public entity that manages critical energy infrastructure or critical electric infrastructure. The lawful custodian of the records must provide a detailed job description for any personnel whose identity is withheld pursuant to subdivision (9)(b) of this section. For purposes of subdivision (9) of this section, critical energy infrastructure and critical electric infrastructure mean existing and proposed systems and assets, including a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of such matters;

(10) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(11) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment and customer use information, credit information on others supplied in confidence, and customer lists;

(12) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(13) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(14) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(15) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(16) Library, archive, and museum materials acquired from nongovernmental entities and preserved solely for reference, research, or exhibition purposes, for the duration specified in subdivision (16)(b) of this section, if:

(a) Such materials are received by the public custodian as a gift, purchase, bequest, or transfer; and

(b) The donor, seller, testator, or transferor conditions such gift, purchase, bequest, or transfer on the materials being kept confidential for a specified period of time;

(17) Job application materials submitted by applicants, other than finalists or a priority candidate for a position described in section 85-106.06 selected using the enhanced public scrutiny process in section 85-106.06, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, (a) job application materials means employment applications, resumes, reference letters, and school transcripts and (b) finalist means any applicant who is not an applicant for a position described in section 85-106.06 and (i) who reaches the final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants;

(18)(a) Records obtained by the Public Employees Retirement Board pursuant to section 84-1512 and (b) records maintained by the board of education of a Class V school district and obtained by the board of trustees for the administration of a retirement system provided for under the Class V School Employees Retirement Act pursuant to section 79-989;

(19) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens;

(20) Information exchanged between a jurisdictional utility and city pursuant to section 66-1867;

(21) Draft records obtained by the Nebraska Retirement Systems Committee of the Legislature and the Governor from Nebraska Public Employees Retirement Systems pursuant to subsection (4) of section 84-1503;

(22) All prescription drug information submitted pursuant to section 71-2454, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system; and

(23) Information obtained by any government entity, whether federal, state, county, or local, regarding firearm registration, possession, sale, or use that is obtained for purposes of an application permitted or required by law or contained in a permit or license issued by such entity. Such information shall be available upon request to any federal, state, county, or local law enforcement agency.

Source: Laws 1979, LB 86, § 5; Laws 1983, LB 108, § 1; Laws 1983, LB 565, § 1; Laws 1993, LB 579, § 6; Laws 1993, LB 590, § 6; Laws 1993, LB 719, § 2; Laws 1994, LB 1061, § 7; Laws 1994, LB 1224, § 88; Laws 1995, LB 343, § 7; Laws 1995, LB 509, § 6; Laws 1999, LB 137, § 1; Laws 2002, LB 276, § 7; Laws 2004, LB 236, § 1; Laws 2004, LB 868, § 3; Laws 2005, LB 361, § 37; Laws 2007, LB389, § 1; Laws 2009, LB188, § 8; Laws 2009, LB658, § 7; Laws 2011, LB230, § 1; Laws 2013, LB410, § 17; Laws 2016, LB447, § 45; Laws 2016, LB471, § 3; Laws 2016, LB1109, § 1; Laws 2018, LB859, § 1; Laws 2018, LB902, § 1; Laws 2019, LB16, § 1; Laws 2019, LB33, § 6; Laws 2019, LB375, § 1.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

Patient Safety Improvement Act, see section 71-8701.

Unmarked Human Burial Sites and Skeletal Remains Protection Act, see section 12-1201.

Under subdivision (3) of this section, a public power district could not withhold its proprietary or commercial information that would give advantage to business competitors, because the district failed to demonstrate by clear and conclusive evidence that the information would serve no public purpose. *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 907 N.W.2d 301 (2018).

Because the Legislature has expressed a strong public policy for disclosure, Nebraska courts must narrowly construe statutory exemptions shielding public records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body opposing disclosure must show by clear and convincing evidence that this section or section 84-712.08 exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

The investigatory record exception does not apply to protect material compiled ancillary to an agency's routine administrative functions or oversight activities. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subdivision (5) of this section, a public body can withhold from the public records of its investigation into an employee's conduct only if the investigation focuses on specifically alleged illegal acts. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

Under subdivision (5) of this section, a public record is an investigatory record where (1) the activity giving rise to the

document sought is related to the duty of investigation or examination with which the public body is charged and (2) the relationship between the investigation or examination and that public body's duty to investigate or examine supports a colorable claim of rationality. This two-part test provides a deferential burden-of-proof rule for a public body performing an investigation or examination with which it is charged. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

A public record is an investigatory record under this section where (1) the activity giving rise to the document sought is related to the duty of investigation or examination with which the public body is charged and (2) the relationship between the investigation or examination and that public body's duty to investigate or examine supports a colorable claim of rationality. When an inquiry by an administrative agency departs from the routine and focuses with special intensity on a particular party, an investigation is underway for purposes of this section. Records that have been "disclosed" within the meaning of this section are only those records that a public body has, in its official capacity, already made available to the general public. *State ex rel. Neb. Health Care Assn. v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

Court upheld Attorney General's refusal to disclose requested documents pursuant to subsections (4) and (5) of this section. *State ex rel. Sileven v. Spire*, 243 Neb. 451, 500 N.W.2d 179 (1993).

84-712.06. Public record; portion provided; when.

Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.

Source: Laws 1979, LB 86, § 6.

84-712.07. Public records; public access; equitable relief; attorney's fees; costs.

The provisions of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 pertaining to the rights of citizens to access to public records may be enforced by equitable relief, whether or not any other remedy is also available. In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.

Source: Laws 1979, LB 86, § 7.

84-712.08. Records; federal government; exception.

If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 would cause the denial of any funds, services, or essential information from the United States Government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

Source: Laws 1979, LB 86, § 8.

Because the Legislature has expressed a strong public policy for disclosure, Nebraska courts must narrowly construe statutory exemptions shielding public records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

If a requesting party satisfies its prima facie claim for release of public records under section 84-712.03, the public body opposing disclosure must show by clear and convincing evidence that section 84-712.05 or this section exempts the records from disclosure. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

84-712.09. Violation; penalty.

Any official who shall violate the provisions of sections 84-712, 84-712.01, and 84-712.03 to 84-712.08 shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1979, LB 86, § 10.

CHAPTER 28

ARTICLE 1

CLASSIFICATION OF PENALTIES

28-106. Misdemeanors; classification of penalties; sentences; where served.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor	Maximum — not more than one year imprisonment, or one thousand dollars fine, or both Minimum — none
Class II misdemeanor	Maximum — six months imprisonment, or one thousand dollars fine, or both Minimum — none
Class III misdemeanor	Maximum — three months imprisonment, or five hundred dollars fine, or both Minimum — none
Class IIIA misdemeanor	Maximum — seven days imprisonment, five hundred dollars fine, or both Minimum — none
Class IV misdemeanor	Maximum — no imprisonment, five hundred dollars fine Minimum — none
Class V misdemeanor	Maximum — no imprisonment, one hundred dollars fine Minimum — none
Class W misdemeanor.....	Driving under the influence or implied consent First conviction Maximum — sixty days imprisonment and five hundred dollars fine Mandatory minimum — seven days imprisonment and five hundred dollars fine Second conviction Maximum — six months imprisonment and five hundred dollars fine Mandatory minimum — thirty days imprisonment and five hundred dollars fine Third conviction Maximum — one year imprisonment and one thousand dollars fine Mandatory minimum — ninety days imprisonment and one thousand dollars fine

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that such sentences may be served in institutions under the jurisdiction of the Department of Correctional Services if the sentence is to be served concurrently or consecutively with a term for conviction of a felony and the combined sentences total a term of one year or more. A determinate sentence shall be imposed for a misdemeanor if the sentence is to be served concurrently or consecutively with a determinate sentence for a Class III, IIIA, or IV felony.

Source: Laws 1977, LB 38, § 6; Laws 1982, LB 568, § 1; Laws 1986, LB 153, § 1; Laws 1992, LB 291, § 1; Laws 1998, LB 309, § 1; Laws 2002, LB 82, § 3; Laws 2005, LB 594, § 1; Laws 2011, LB 675, § 1; Laws 2015, LB 605, § 7; Laws 2016, LB 1094, § 3.

A determinate sentence, as used in subsection (2) of this section, is imposed when the defendant is sentenced to a single term of years. *State v. Vanness*, 300 Neb. 159, 912 N.W.2d 736 (2018).

The proper determination of punishment for fourth offense driving under the influence of an alcoholic liquor or drug is governed by subsection (1) of this section and not by

section 28-107(3). *State v. Schultz*, 252 Neb. 746, 566 N.W.2d 739 (1997).

For a Class III misdemeanor, a sentence of five days in jail with a fine of three hundred dollars is within the statutory maximum and will not be disturbed on appeal absent an abuse of discretion. *State v. Rosenberry*, 209 Neb. 383, 307 N.W.2d 823 (1981).