

Public Records

§ 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 the same, 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.

(b) Except as otherwise provided by statute, 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 cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual cost of making the copies available shall not exceed the amount of the reasonably calculated actual cost of the photocopies, (ii) for printouts of computerized data on paper, the actual cost of making the copies available shall include the reasonably calculated actual cost of computer run

§ 84-712 (continued)

time and the cost of materials for making the copy, and (iii) for electronic data, the actual cost of making the copies available shall include the reasonably calculated actual cost of the computer run time, any necessary analysis and programming, and the production of the report in the form furnished to the requester. State agencies which provide electronic access to public records through a gateway service 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 cost of making the copies available may include the approved fee for the gateway service.

(c) 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.

(d) 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, 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.

§ 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.

§ 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

§ 84-712.02 (continued)

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.

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

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

(1) 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

(2) 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. This determination shall be made within fifteen calendar days of 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 (a) bring suit in the trial court of general jurisdiction or (b) 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 of its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

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

§ 84-712.03 (continued)

court other persons, including the requester, counsel, and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders.

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

§ 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.

§ 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:

§ 84-712.05 (continued)

(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 January 1, 2003;

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

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale,

§ 84-712.05 (continued)

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) 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;

(10) 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;

(11) 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;

§ 84-712.05 (continued)

(12) 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;

(13) 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;

(14) 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;

(15) Job application materials submitted by applicants, other than finalists, 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

§ 84-712.05 (continued)

transcripts and (b) finalist means any applicant (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;

(16) Records obtained by the Public Employees Retirement Board pursuant to section 84-1512;

(17) 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; and

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

§ 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.

§ 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.

§ 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

§ 84-712.08 (continued)

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.

§ 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.

Additional Related Provision

§ 84-713. Settled claims; record required; contents; public record; certain settlement agreements; public agency; agenda item; applicability of section.

(1) A public entity or public agency providing coverage to a public entity, public official, or public employee shall maintain a public written or electronic record of all settled claims. The record for all such claims settled in the amount of fifty thousand dollars or more, or one percent of the total annual budget of the public entity, whichever is less, shall include a written executed settlement agreement. The settlement agreement shall contain a brief description of the claim, the party or parties released under the settlement, and the amount of the financial compensation, if any, paid by or to the public entity or on its behalf.

(2) Any claim or settlement agreement involving a public entity shall be a public record but, to the extent permitted by sections 84-712.04 and 84-712.05 and as otherwise provided by statute, specific portions of the claim or settlement agreement may be withheld from the public. A private insurance company or public agency providing coverage to the public entity shall, without delay, provide to the public entity a copy of any claim or settlement agreement to be maintained as a public record.

(3) Except for settlement agreements involving the state, any state agency, or any employee of the state or pursuant to claims filed under the State Tort Claims Act, any settlement agreement with an amount of financial consideration of fifty thousand dollars or more, or one percent of the total annual budget of the public entity, whichever is less, shall be included as an agenda item at the next meeting of a public agency providing coverage to a public entity and as an agenda item on the next regularly scheduled public meeting of the public body for informational purposes or for approval if required.

(4) For purposes of this section, a confidentiality or nondisclosure clause or provision contained in or relating to a settlement agreement shall neither cause nor permit a settlement agreement or the claim or any other public record to be withheld from the public. Nothing in this section shall require a public official

§ 84-713 (continued)

or public employee or any party to the settlement agreement to comment on the settlement agreement.

(5) For purposes of this section:

(a) Confidentiality or nondisclosure clause or provision means any covenant or stipulation adopted by parties to a settlement agreement that designates the settlement agreement, the claim, or any other public record as confidential, or in any other way restricts public access to information concerning the settlement agreement or claim;

(b) Public body means public body as defined in subdivision (1) of section 84-1409;

(c) Public entity means a public entity listed in subdivision (1) of section 84-712.01; and

(d) Settlement agreement means any contractual agreement to settle or resolve a claim involving a public entity or on behalf of the public entity, a public official, or a public employee by (i) the public entity, (ii) a private insurance company, or (iii) a public agency providing coverage.

(6) This section does not apply to claims made in connection with insured or self-insured health insurance contracts.