

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 365

Introduced by Blood, 3; Crawford, 45.

Read first time January 13, 2017

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to public records; to amend sections 84-712,
2 84-712.01, and 84-712.07, Reissue Revised Statutes of Nebraska, and
3 section 84-712.05, Revised Statutes Cumulative Supplement, 2016; to
4 define a term; to change provisions relating to access to and fees
5 for public records; to harmonize provisions; and to repeal the
6 original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-712, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 84-712 (1) Except as otherwise expressly provided by statute, all
4 residents ~~citizens~~ of this state and all other persons interested in the
5 examination of the public records as defined in section 84-712.01 are
6 hereby fully empowered and authorized to (a) examine such records, and
7 make memoranda, copies using their own copying or photocopying equipment
8 in accordance with subsection (2) of this section, and abstracts
9 therefrom, all free of charge, during the hours the respective offices
10 may be kept open for the ordinary transaction of business and (b) except
11 if federal copyright law otherwise provides, obtain copies of public
12 records in accordance with subsection (3) of this section during the
13 hours the respective offices may be kept open for the ordinary
14 transaction of business.

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

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

1 copies for the requester as provided in this subsection.

2 (b) Except as otherwise provided by statute, the public body, public
3 entity, or public official which is the custodian of a public record may
4 charge a fee for providing copies of such public record pursuant to
5 subdivision (1)(b) of this section, which fee shall not exceed the actual
6 added cost of making the copies available. For purposes of this
7 subdivision, (i) for photocopies, the actual added cost of making the
8 copies available shall not exceed the amount of the reasonably calculated
9 actual added cost of the photocopies, which may include a reasonably
10 apportioned cost of the supplies, such as paper, toner, and equipment,
11 used in preparing the copies, as well as any additional payment
12 obligation of the custodian for time of contractors necessarily incurred
13 to comply with the request for copies, (ii) for printouts of computerized
14 data on paper, the actual added cost of making the copies available shall
15 include the reasonably calculated actual added cost of computer run time
16 and the cost of materials for making the copy, and (iii) for electronic
17 data, the actual added cost of making the copies available shall include
18 the reasonably calculated actual added cost of the computer run time, any
19 necessary analysis and programming by the public body, public entity,
20 public official, or third-party information technology services company
21 contracted to provide computer services to the public body, public
22 entity, or public official, and the production of the report in the form
23 furnished to the requester.

24 (c) For residents of Nebraska, the ~~The~~ actual added cost used as the
25 basis for the calculation of a fee for records shall not include any
26 charge for the existing salary or pay obligation to the public officers
27 or employees with respect to the first four cumulative hours of
28 searching, identifying, physically redacting, or copying. A special
29 service charge reflecting the calculated labor cost may be included in
30 the fee for time required in excess of four cumulative hours, since that
31 large a request may cause some delay or disruption of the other

1 responsibilities of the custodian's office, except that the fee for
2 records shall not include any charge for the services of an attorney to
3 review the requested public records seeking a legal basis to withhold the
4 public records from the public.

5 (d) For nonresidents of Nebraska, the actual added cost used as the
6 basis for the calculation of a fee for records may include a charge for
7 the existing salary or pay obligation to the public officers or
8 employees, including a charge for the services of an attorney to review
9 the requested public records.

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

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

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

24 (4) Upon receipt of a written request for access to or copies of a
25 public record, the custodian of such record shall provide to the
26 requester as soon as is practicable and without delay, but not more than
27 four business days after actual receipt of the request, an estimate of
28 the expected cost of the copies and either (a) access to or, if copying
29 equipment is reasonably available, copies of the public record, (b) if
30 there is a legal basis for denial of access or copies, a written denial
31 of the request together with the information specified in section

1 84-712.04, or (c) if the entire request cannot with reasonable good faith
2 efforts be fulfilled within four business days after actual receipt of
3 the request due to the significant difficulty or the extensiveness of the
4 request, a written explanation, including the earliest practicable date
5 for fulfilling the request, an estimate of the expected cost of any
6 copies, and an opportunity for the requester to modify or prioritize the
7 items within the request. The requester shall have ten business days to
8 review the estimated costs, including any special service charge, and
9 request the custodian to fulfill the original request, negotiate with the
10 custodian to narrow or simplify the request, or withdraw the request. If
11 the requester does not respond to the custodian within ten business days,
12 the custodian shall not proceed to fulfill the request. The four business
13 days shall be computed by excluding the day the request is received,
14 after which the designated period of time begins to run. Business day
15 does not include a Saturday, a Sunday, or a day during which the offices
16 of the custodian of the public records are closed.

17 (5) For purposes of sections 84-712 to 84-712.09, resident means a
18 person domiciled in this state and includes news media without regard to
19 domicile.

20 Sec. 2. Section 84-712.01, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 84-712.01 (1) Except when any other statute expressly provides that
23 particular information or records shall not be made public, public
24 records shall include all records and documents, regardless of physical
25 form, of or belonging to this state, any county, city, village, political
26 subdivision, or tax-supported district in this state, or any agency,
27 branch, department, board, bureau, commission, council, subunit, or
28 committee of any of the foregoing. Data which is a public record in its
29 original form shall remain a public record when maintained in computer
30 files.

31 (2) When a custodian of a public record of a county provides to a

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

11 (3) Sections 84-712 to 84-712.03 shall be liberally construed
12 whenever any state, county, or political subdivision fiscal records,
13 audit, warrant, voucher, invoice, purchase order, requisition, payroll,
14 check, receipt, or other record of receipt, cash, or expenditure
15 involving public funds is involved in order that the residents ~~citizens~~
16 of this state shall have the full right to know of and have full access
17 to information on the public finances of the government and the public
18 bodies and entities created to serve them.

19 Sec. 3. Section 84-712.05, Revised Statutes Cumulative Supplement,
20 2016, is amended to read:

21 84-712.05 The following records, unless publicly disclosed in an
22 open court, open administrative proceeding, or open meeting or disclosed
23 by a public entity pursuant to its duties, may be withheld from the
24 public by the lawful custodian of the records:

25 (1) Personal information in records regarding a student, prospective
26 student, or former student of any educational institution or exempt
27 school that has effectuated an election not to meet state approval or
28 accreditation requirements pursuant to section 79-1601 when such records
29 are maintained by and in the possession of a public entity, other than
30 routine directory information specified and made public consistent with
31 20 U.S.C. 1232g, as such section existed on February 1, 2013, and

1 regulations adopted thereunder;

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

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

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

14 (5) Records developed or received by law enforcement agencies and
15 other public bodies charged with duties of investigation or examination
16 of persons, institutions, or businesses, when the records constitute a
17 part of the examination, investigation, intelligence information, ~~citizen~~
18 complaints or inquiries from residents of this state or other interested
19 persons, informant identification, or strategic or tactical information
20 used in law enforcement training, except that this subdivision shall not
21 apply to records so developed or received relating to the presence of and
22 amount or concentration of alcohol or drugs in any body fluid of any
23 person;

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

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

29 (8) Information solely pertaining to protection of the security of
30 public property and persons on or within public property, such as
31 specific, unique vulnerability assessments or specific, unique response

1 plans, either of which is intended to prevent or mitigate criminal acts
2 the public disclosure of which would create a substantial likelihood of
3 endangering public safety or property; computer or communications network
4 schema, passwords, and user identification names; guard schedules; lock
5 combinations; or public utility infrastructure specifications or design
6 drawings the public disclosure of which would create a substantial
7 likelihood of endangering public safety or property, unless otherwise
8 provided by state or federal law;

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

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

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

25 (12) Correspondence, memoranda, and records of telephone calls
26 related to the performance of duties by a member of the Legislature in
27 whatever form. The lawful custodian of the correspondence, memoranda, and
28 records of telephone calls, upon approval of the Executive Board of the
29 Legislative Council, shall release the correspondence, memoranda, and
30 records of telephone calls which are not designated as sensitive or
31 confidential in nature to any person performing an audit of the

1 Legislature. A member's correspondence, memoranda, and records of
2 confidential telephone calls related to the performance of his or her
3 legislative duties shall only be released to any other person with the
4 explicit approval of the member;

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

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

22 (15) Job application materials submitted by applicants, other than
23 finalists or a priority candidate for a position described in section
24 85-106.06 selected using the enhanced public scrutiny process in section
25 85-106.06, who have applied for employment by any public body as defined
26 in section 84-1409. For purposes of this subdivision, (a) job application
27 materials means employment applications, resumes, reference letters, and
28 school transcripts and (b) finalist means any applicant who is not an
29 applicant for a position described in section 85-106.06 and (i) who
30 reaches the final pool of applicants, numbering four or more, from which
31 the successful applicant is to be selected, (ii) who is an original

1 applicant when the final pool of applicants numbers less than four, or
2 (iii) who is an original applicant and there are four or fewer original
3 applicants;

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

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

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

11 (19) Draft records obtained by the Nebraska Retirement Systems
12 Committee of the Legislature and the Governor from Nebraska Public
13 Employees Retirement Systems pursuant to subsection (4) of section
14 84-1503; and

15 (20) All prescription drug information submitted pursuant to section
16 71-2454, all data contained in the prescription drug monitoring system,
17 and any report obtained from data contained in the prescription drug
18 monitoring system.

19 Sec. 4. Section 84-712.07, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 84-712.07 The provisions of sections 84-712, 84-712.01, 84-712.03 to
22 84-712.09, and 84-1413 pertaining to the rights of residents of this
23 state and all other interested persons ~~citizens~~ to access to public
24 records may be enforced by equitable relief, whether or not any other
25 remedy is also available. In any case in which the complainant seeking
26 access has substantially prevailed, the court may assess against the
27 public body which had denied access to its ~~their~~ records, reasonable
28 attorney's ~~attorney~~ fees and other litigation costs reasonably incurred
29 by the complainant.

30 Sec. 5. Original sections 84-712, 84-712.01, and 84-712.07, Reissue
31 Revised Statutes of Nebraska, and section 84-712.05, Revised Statutes

1 Cumulative Supplement, 2016, are repealed.