

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1195

Introduced by Morfeld, 46.

Read first time January 23, 2020

Committee:

- 1 A BILL FOR AN ACT relating to public records; to amend sections 84-712.01
- 2 and 84-712.07, Reissue Revised Statutes of Nebraska, and section
- 3 84-712.05, Revised Statutes Supplement, 2019; to change provisions
- 4 relating to access to public records; and to repeal the original
- 5 sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-712.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 84-712.01 (1) Except when any other statute expressly provides that
4 particular information or records shall not be made public, public
5 records shall include all records and documents, regardless of physical
6 form, of or belonging to this state, any county, city, village, political
7 subdivision, or tax-supported district in this state, or any agency,
8 branch, department, board, bureau, commission, council, subunit, or
9 committee of any of the foregoing. Data which is a public record in its
10 original form shall remain a public record when maintained in computer
11 files regardless of the form in which it is stored.

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

23 (3) Sections 84-712 to 84-712.03 shall be liberally construed
24 whenever any state, county, or political subdivision fiscal records,
25 audit, warrant, voucher, invoice, purchase order, requisition, payroll,
26 check, receipt, or other record of receipt, cash, or expenditure
27 involving public funds is involved in order that the citizens and
28 residents of this state shall have the full right to know of and have
29 full access to information on the public finances of the government and
30 the public bodies and entities created to serve them.

31 Sec. 2. Section 84-712.05, Revised Statutes Supplement, 2019, is

1 amended to read:

2 84-712.05 The following records, unless publicly disclosed in an
3 open court, open administrative proceeding, or open meeting or disclosed
4 by a public entity pursuant to its duties, may be withheld from the
5 public by the lawful custodian of the records:

6 (1) Personal information in records regarding a student, prospective
7 student, or former student of any educational institution or exempt
8 school that has effectuated an election not to meet state approval or
9 accreditation requirements pursuant to section 79-1601 when such records
10 are maintained by and in the possession of a public entity, other than
11 routine directory information specified and made public consistent with
12 20 U.S.C. 1232g, as such section existed on February 1, 2013, and
13 regulations adopted thereunder;

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

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

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

26 (5) Records developed or received by law enforcement agencies and
27 other public bodies charged with duties of investigation or examination
28 of persons, institutions, or businesses, when the records constitute a
29 part of the examination, investigation, intelligence information, citizen
30 or resident complaints or inquiries, informant identification, or
31 strategic or tactical information used in law enforcement training,

1 except that this subdivision shall not apply to records so developed or
2 received:

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

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

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

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

21 (8) Information solely pertaining to protection of the security of
22 public property and persons on or within public property, such as
23 specific, unique vulnerability assessments or specific, unique response
24 plans, either of which is intended to prevent or mitigate criminal acts
25 the public disclosure of which would create a substantial likelihood of
26 endangering public safety or property; computer or communications network
27 schema, passwords, and user identification names; guard schedules; lock
28 combinations; or public utility infrastructure specifications or design
29 drawings the public disclosure of which would create a substantial
30 likelihood of endangering public safety or property, unless otherwise
31 provided by state or federal law;

1 (9) Information that relates details of physical and cyber assets of
2 critical energy infrastructure or critical electric infrastructure,
3 including (a) specific engineering, vulnerability, or detailed design
4 information about proposed or existing critical energy infrastructure or
5 critical electric infrastructure that (i) relates details about the
6 production, generation, transportation, transmission, or distribution of
7 energy, (ii) could be useful to a person in planning an attack on such
8 critical infrastructure, and (iii) does not simply give the general
9 location of the critical infrastructure and (b) the identity of personnel
10 whose primary job function makes such personnel responsible for (i)
11 providing or granting individuals access to physical or cyber assets or
12 (ii) operating and maintaining physical or cyber assets, if a reasonable
13 person, knowledgeable of the electric utility or energy industry, would
14 conclude that the public disclosure of such identity could create a
15 substantial likelihood of risk to such physical or cyber assets.
16 Subdivision (9)(b) of this section shall not apply to the identity of a
17 chief executive officer, general manager, vice president, or board member
18 of a public entity that manages critical energy infrastructure or
19 critical electric infrastructure. The lawful custodian of the records
20 must provide a detailed job description for any personnel whose identity
21 is withheld pursuant to subdivision (9)(b) of this section. For purposes
22 of subdivision (9) of this section, critical energy infrastructure and
23 critical electric infrastructure mean existing and proposed systems and
24 assets, including a system or asset of the bulk-power system, whether
25 physical or virtual, the incapacity or destruction of which would
26 negatively affect security, economic security, public health or safety,
27 or any combination of such matters;

28 (10) The security standards, procedures, policies, plans,
29 specifications, diagrams, access lists, and other security-related
30 records of the Lottery Division of the Department of Revenue and those
31 persons or entities with which the division has entered into contractual

1 relationships. Nothing in this subdivision shall allow the division to
2 withhold from the public any information relating to amounts paid persons
3 or entities with which the division has entered into contractual
4 relationships, amounts of prizes paid, the name of the prize winner, and
5 the city, village, or county where the prize winner resides;

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

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

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

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

1 the federal Native American Graves Protection and Repatriation Act;

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

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

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

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

19 (17) Job application materials submitted by applicants, other than
20 finalists or a priority candidate for a position described in section
21 85-106.06 selected using the enhanced public scrutiny process in section
22 85-106.06, who have applied for employment by any public body as defined
23 in section 84-1409. For purposes of this subdivision, (a) job application
24 materials means employment applications, resumes, reference letters, and
25 school transcripts and (b) finalist means any applicant who is not an
26 applicant for a position described in section 85-106.06 and (i) who
27 reaches the final pool of applicants, numbering four or more, from which
28 the successful applicant is to be selected, (ii) who is an original
29 applicant when the final pool of applicants numbers less than four, or
30 (iii) who is an original applicant and there are four or fewer original
31 applicants;

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

6 (19) 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 persons ~~citizens~~;

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

11 (21) 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;

15 (22) 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; and

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

25 Sec. 3. Section 84-712.07, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 84-712.07 The provisions of sections 84-712, 84-712.01, 84-712.03 to
28 84-712.09, and 84-1413 pertaining to the rights of citizens and other
29 persons to access to public records may be enforced by equitable relief,
30 whether or not any other remedy is also available. In any case in which
31 the complainant seeking access has substantially prevailed, the court may

1 assess against the public body which had denied access to their records,
2 reasonable attorney fees and other litigation costs reasonably incurred
3 by the complainant.

4 Sec. 4. Original sections 84-712.01 and 84-712.07, Reissue Revised
5 Statutes of Nebraska, and section 84-712.05, Revised Statutes Supplement,
6 2019, are repealed.