

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 650

Introduced by McDonnell, 5.

Read first time January 18, 2023

Committee:

- 1 A BILL FOR AN ACT relating to public records; to amend section 84-712.05,
- 2 Revised Statutes Cumulative Supplement, 2022; to allow certain
- 3 records relating to cybersecurity to be withheld from the public as
- 4 prescribed; to repeal the original section; and to declare an
- 5 emergency.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-712.05, Revised Statutes Cumulative
2 Supplement, 2022, is amended to read:

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

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

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

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20 progress and unpublished, and other proprietary or commercial information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

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

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

1 tactical information used in law enforcement training, except that this
2 subdivision shall not apply to records so developed or 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 making complaints or
11 inquiries, other information which would compromise an ongoing criminal
12 investigation, or information which may be withheld from the public under
13 another provision of law. For purposes of this subdivision, family member
14 means a spouse, child, parent, sibling, grandchild, or grandparent by
15 blood, marriage, or adoption;

16 (6) The identity and personal identifying information of an alleged
17 victim of sexual assault or sex trafficking as provided in section
18 29-4316;

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

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

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

1 drawings the public disclosure of which would create a substantial
2 likelihood of endangering public safety or property, unless otherwise
3 provided by state or federal law;

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

31 (11) The security standards, procedures, policies, plans,

1 specifications, diagrams, access lists, and other security-related
2 records of the Lottery Division of the Department of Revenue and those
3 persons or entities with which the division has entered into contractual
4 relationships. Nothing in this subdivision shall allow the division to
5 withhold from the public any information relating to amounts paid persons
6 or entities with which the division has entered into contractual
7 relationships, amounts of prizes paid, the name of the prize winner, and
8 the city, village, or county where the prize winner resides;

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

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

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

27 (15) Records or portions of records kept by public bodies which
28 would reveal the location, character, or ownership of any known
29 archaeological, historical, or paleontological site in Nebraska when
30 necessary to protect the site from a reasonably held fear of theft,
31 vandalism, or trespass. This section shall not apply to the release of

1 information for the purpose of scholarly research, examination by other
2 public bodies for the protection of the resource or by recognized tribes,
3 the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or
4 the federal Native American Graves Protection and Repatriation Act;

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

13 (17) Library, archive, and museum materials acquired from
14 nongovernmental entities and preserved solely for reference, research, or
15 exhibition purposes, for the duration specified in subdivision (17)(b) of
16 this section, if:

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

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

22 (18) 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 (19)(a) Records obtained by the Public Employees Retirement Board
5 pursuant to section 84-1512 and (b) records maintained by the board of
6 education of a Class V school district and obtained by the board of
7 trustees or the Public Employees Retirement Board for the administration
8 of a retirement system provided for under the Class V School Employees
9 Retirement Act pursuant to section 79-989;

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

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

15 (22) Draft records obtained by the Nebraska Retirement Systems
16 Committee of the Legislature and the Governor from Nebraska Public
17 Employees Retirement Systems pursuant to subsection (4) of section
18 84-1503;

19 (23) All prescription drug information submitted pursuant to section
20 71-2454, all data contained in the prescription drug monitoring system,
21 and any report obtained from data contained in the prescription drug
22 monitoring system;

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

29 (25) The security standards, procedures, policies, plans,
30 specifications, diagrams, and access lists and other security-related
31 records of the State Racing and Gaming Commission, those persons or

1 entities with which the commission has entered into contractual
2 relationships, and the names of any individuals placed on the list of
3 self-excluded persons with the commission as provided in section 9-1118.
4 Nothing in this subdivision shall allow the commission to withhold from
5 the public any information relating to the amount paid any person or
6 entity with which the commission has entered into a contractual
7 relationship, the amount of any prize paid, the name of the prize winner,
8 and the city, village, or county where the prize winner resides; and -

9 (26) Records relating to the nature, location, or function of
10 cybersecurity by the State of Nebraska or any of its political
11 subdivisions, including, but not limited to, devices, programs, or
12 systems designed to protect computer, information technology, or
13 communications systems against terrorist or other attacks. The Nebraska
14 Information Technology Commission shall adopt and promulgate rules and
15 regulations to implement the provisions of this subdivision.

16 Sec. 2. Original section 84-712.05, Revised Statutes Cumulative
17 Supplement, 2022, is repealed.

18 Sec. 3. Since an emergency exists, this act takes effect when
19 passed and approved according to law.