

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 366

Introduced by Conrad, 46.

Read first time January 12, 2023

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 sections 81-1454, 84-712.03, and 84-712.05, Revised Statutes
4 Cumulative Supplement, 2020; to provide that recordings from body-
5 worn cameras of peace officers depicting the death of a person being
6 apprehended or in custody are public records; to change public
7 records provisions relating to residents, nonresidents, fees, and
8 remedies; to define a term; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-1454, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 81-1454 (1) A body-worn camera policy required by section 81-1453
4 shall include provisions which govern the use of body-worn cameras by
5 peace officers and the retention and disposition of recordings created
6 with such cameras by law enforcement agencies. Such body-worn camera
7 policy shall include, but not be limited to:

8 (a) ~~(1)~~ A requirement that training be provided to any peace officer
9 who will use a body-worn camera and to any other employee who will come
10 into contact with video or audio data recorded by a body-worn camera;

11 (b) ~~(2)~~ A requirement that recordings created by body-worn cameras
12 shall be retained for a minimum period of ninety days from the date of
13 recording. Such recordings shall be retained for more than ninety days if
14 required by the following circumstances:

15 (i) ~~(a)~~ Upon notice to the law enforcement agency of a criminal or
16 civil court proceeding in which the recording may have evidentiary value
17 or in which the recording is otherwise involved, the recording shall be
18 retained until final judgment has been entered in the proceeding;

19 (ii) ~~(b)~~ Upon notice to the law enforcement agency of a disciplinary
20 proceeding against an employee of the agency in which the recording may
21 have evidentiary value or in which the recording is otherwise involved,
22 the recording shall be retained until a final determination has been made
23 in such proceeding; and

24 (iii) ~~(c)~~ If the recording is part of a criminal investigation that
25 has not resulted in an arrest or prosecution, the recording shall be
26 retained until the investigation is officially closed or suspended; and

27 (c) ~~(3)~~ A procedure governing the destruction of recordings after
28 the retention period described in subdivision (1)(b) ~~(2)~~ of this section
29 has elapsed.

30 (2) Recordings created by body-worn cameras which depict or record
31 circumstances in which a person died while being apprehended by, or while

1 in the custody of, a law enforcement officer or detention personnel,
2 including duplicates of such recordings, are public records under section
3 84-712.01.

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

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

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

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

1 requester. If the requester does not have reasonable access to the
2 Internet due to lack of computer, lack of Internet availability, or
3 inability to use a computer or the Internet, the custodian shall produce
4 copies for the requester as provided in this section.

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

27 (c) For residents of Nebraska, the ~~The~~ actual added cost used as the
28 basis for the calculation of a fee for records shall not include any
29 charge for the existing salary or pay obligation to the public officers
30 or employees with respect to the first eight ~~four~~ cumulative hours of
31 searching, identifying, physically redacting, or copying. A special

1 service charge reflecting the calculated labor cost may be included in
2 the fee for time required in excess of eight ~~four~~ cumulative hours, since
3 that large of a request may cause some delay or disruption of the other
4 responsibilities of the custodian's office, except that the fee for
5 records shall not include any charge for the services of an attorney or
6 any other person to review the requested public records seeking a legal
7 basis to withhold the public records from the public. No special service
8 charge or fee shall be charged for copies of blank forms or pages that
9 have all meaningful information redacted.

10 (d) For nonresidents of Nebraska, the actual added cost used as the
11 basis for the calculation of a fee for records may include a charge for
12 the proportion of the existing salary or pay obligation to the public
13 officers or employees, including a proportional charge for the services
14 of an attorney to review the requested public records for the time spent
15 searching, identifying, physically redacting, copying, or reviewing such
16 records.

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

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

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

31 (h) The custodian may waive or reduce any fee described in this

1 section if the waiver or reduction of the fee would be in the public
2 interest. Disclosure is in the public interest if it is likely to
3 contribute to the understanding of the operations or activities of
4 government and is not primarily in the commercial interest of the person
5 requesting such records.

6 (4) Upon receipt of a written request for access to or copies of a
7 public record, the custodian of such record shall provide to the
8 requester as soon as is practicable and without delay, but not more than
9 four business days after actual receipt of the request, an estimate of
10 the expected cost of the copies and either (a) access to or, if copying
11 equipment is reasonably available, copies of the public record, (b) if
12 there is a legal basis for denial of access or copies, a written denial
13 of the request together with the information specified in section
14 84-712.04, or (c) if the entire request cannot with reasonable good faith
15 efforts be fulfilled within four business days after actual receipt of
16 the request due to the significant difficulty or the extensiveness of the
17 request, a written explanation, including the earliest practicable date
18 for fulfilling the request, an estimate of the expected cost of any
19 copies, and an opportunity for the requester to modify or prioritize the
20 items within the request. Such estimate shall be provided to the
21 requester in writing and such written estimate shall be attested to under
22 oath by the custodian of the public records. The requester shall have ten
23 business days to review the estimated costs, including any special
24 service charge, and request the custodian to fulfill the original
25 request, negotiate with the custodian to narrow or simplify the request,
26 or withdraw the request. If the requester does not respond to the
27 custodian within ten business days, the custodian shall not proceed to
28 fulfill the request. The four business days shall be computed by
29 excluding the day the request is received, after which the designated
30 period of time begins to run. Business day does not include a Saturday, a
31 Sunday, or a day during which the offices of the custodian of the public

1 records are closed.

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

5 Sec. 3. Section 84-712.01, Reissue Revised Statutes of Nebraska, is
6 amended to read:

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

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

27 (3) Sections 84-712 to 84-712.03 shall be liberally construed
28 whenever any state, county, or political subdivision fiscal records,
29 audit, warrant, voucher, invoice, purchase order, requisition, payroll,
30 check, receipt, or other record of receipt, cash, or expenditure
31 involving public funds is involved in order that the residents ~~citizens~~

1 of this state shall have the full right to know of and have full access
2 to information on the public finances of the government and the public
3 bodies and entities created to serve them.

4 Sec. 4. Section 84-712.03, Revised Statutes Cumulative Supplement,
5 2022, is amended to read:

6 84-712.03 (1) Any person denied any rights granted by sections
7 84-712 to 84-712.03 may elect to:

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

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

30 (2) In any suit filed under this section, the court has jurisdiction
31 to enjoin the public body from withholding records, to order the

1 disclosure, and to grant such other equitable relief as may be proper.
2 The court shall determine the matter de novo and the burden is on the
3 public body to sustain its action. The court may view the records in
4 controversy in camera before reaching a decision, and in the discretion
5 of the court other persons, including the requester, counsel, and
6 necessary expert witnesses, may be permitted to view the records, subject
7 to necessary protective orders.

8 (3) Proceedings arising under this section shall be advanced on the
9 trial docket and heard and decided by the court as soon as reasonably
10 possible and , ~~except as to the cases the court considers of greater~~
11 ~~importance,~~ shall take precedence on the trial docket over all other
12 cases and shall be assigned for hearing, trial, or argument at the
13 earliest practicable date and expedited in every way.

14 Sec. 5. Section 84-712.05, Revised Statutes Cumulative Supplement,
15 2022, is amended to read:

16 84-712.05 The following records, unless publicly disclosed in an
17 open court, open administrative proceeding, or open meeting or disclosed
18 by a public entity pursuant to its duties, may be withheld from the
19 public by the lawful custodian of the records:

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

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

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

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

9 (5) Records developed or received by law enforcement agencies and
10 other public bodies charged with duties of investigation or examination
11 of persons, institutions, or businesses, when the records constitute a
12 part of the examination, investigation, intelligence information, ~~citizen~~
13 complaints or inquiries from residents of this state or other interested
14 persons, informant identification, or strategic or tactical information
15 used in law enforcement training, except that this subdivision shall not
16 apply to records so developed or received:

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

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

30 (c) Relating to recordings created by body-worn cameras as defined
31 in section 81-1452, which depict or record circumstances in which a

1 person died while being apprehended by, or while in the custody of, a law
2 enforcement officer or detention personnel, including, but not limited
3 to, a recording or duplicate of such recording;

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

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

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

12 (9) Information solely pertaining to protection of the security of
13 public property and persons on or within public property, such as
14 specific, unique vulnerability assessments or specific, unique response
15 plans, either of which is intended to prevent or mitigate criminal acts
16 the public disclosure of which would create a substantial likelihood of
17 endangering public safety or property; computer or communications network
18 schema, passwords, and user identification names; guard schedules; lock
19 combinations; or public utility infrastructure specifications or design
20 drawings the public disclosure of which would create a substantial
21 likelihood of endangering public safety or property, unless otherwise
22 provided by state or federal law;

23 (10) Information that relates details of physical and cyber assets
24 of critical energy infrastructure or critical electric infrastructure,
25 including (a) specific engineering, vulnerability, or detailed design
26 information about proposed or existing critical energy infrastructure or
27 critical electric infrastructure that (i) relates details about the
28 production, generation, transportation, transmission, or distribution of
29 energy, (ii) could be useful to a person in planning an attack on such
30 critical infrastructure, and (iii) does not simply give the general
31 location of the critical infrastructure and (b) the identity of personnel

1 whose primary job function makes such personnel responsible for (i)
2 providing or granting individuals access to physical or cyber assets or
3 (ii) operating and maintaining physical or cyber assets, if a reasonable
4 person, knowledgeable of the electric utility or energy industry, would
5 conclude that the public disclosure of such identity could create a
6 substantial likelihood of risk to such physical or cyber assets.
7 Subdivision (10)(b) of this section shall not apply to the identity of a
8 chief executive officer, general manager, vice president, or board member
9 of a public entity that manages critical energy infrastructure or
10 critical electric infrastructure. The lawful custodian of the records
11 must provide a detailed job description for any personnel whose identity
12 is withheld pursuant to subdivision (10)(b) of this section. For purposes
13 of subdivision (10) of this section, critical energy infrastructure and
14 critical electric infrastructure mean existing and proposed systems and
15 assets, including a system or asset of the bulk-power system, whether
16 physical or virtual, the incapacity or destruction of which would
17 negatively affect security, economic security, public health or safety,
18 or any combination of such matters;

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

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

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

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

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

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

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

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

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

10 (18) Job application materials submitted by applicants, other than
11 finalists or a priority candidate for a position described in section
12 85-106.06 selected using the enhanced public scrutiny process in section
13 85-106.06, who have applied for employment by any public body as defined
14 in section 84-1409. For purposes of this subdivision, (a) job application
15 materials means employment applications, resumes, reference letters, and
16 school transcripts and (b) finalist means any applicant who is not an
17 applicant for a position described in section 85-106.06 and (i) who
18 reaches the final pool of applicants, numbering four or more, from which
19 the successful applicant is to be selected, (ii) who is an original
20 applicant when the final pool of applicants numbers less than four, or
21 (iii) who is an original applicant and there are four or fewer original
22 applicants;

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

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

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

3 (22) Draft records obtained by the Nebraska Retirement Systems
4 Committee of the Legislature and the Governor from Nebraska Public
5 Employees Retirement Systems pursuant to subsection (4) of section
6 84-1503;

7 (23) All prescription drug information submitted pursuant to section
8 71-2454, all data contained in the prescription drug monitoring system,
9 and any report obtained from data contained in the prescription drug
10 monitoring system;

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

17 (25) The security standards, procedures, policies, plans,
18 specifications, diagrams, and access lists and other security-related
19 records of the State Racing and Gaming Commission, those persons or
20 entities with which the commission has entered into contractual
21 relationships, and the names of any individuals placed on the list of
22 self-excluded persons with the commission as provided in section 9-1118.
23 Nothing in this subdivision shall allow the commission to withhold from
24 the public any information relating to the amount paid any person or
25 entity with which the commission has entered into a contractual
26 relationship, the amount of any prize paid, the name of the prize winner,
27 and the city, village, or county where the prize winner resides.

28 Sec. 6. Section 84-712.07, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 84-712.07 The provisions of sections 84-712, 84-712.01, 84-712.03 to
31 84-712.09, and 84-1413 pertaining to the rights of residents of this

1 state and all other interested persons ~~citizens~~ to access to public
2 records may be enforced by equitable relief, whether or not any other
3 remedy is also available. In any case in which the complainant seeking
4 access has substantially prevailed, the court may assess against the
5 public body which had denied access to their records, reasonable attorney
6 fees and other litigation costs reasonably incurred by the complainant.

7 Sec. 7. Original sections 84-712, 84-712.01, and 84-712.07, Reissue
8 Revised Statutes of Nebraska, and sections 81-1454, 84-712.03, and
9 84-712.05, Revised Statutes Cumulative Supplement, 2022, are repealed.