



LRO SNAPSHOT

A brief from the Legislative Research Office

May 2023

Watchfulness in the Citizen: A Guide to Nebraska's Sunshine Laws

By LaMont Rainey, Legal Counsel

The state of Nebraska has long recognized the importance of an active and informed citizenry. Inscribed on the north face of the State Capitol building are the words; "The Salvation of the State is Watchfulness in the Citizen." Nebraska promotes citizen watchfulness through its open meetings and public records laws.

All fifty states and the District of Columbia have some form of open meetings and open records laws. These laws, known as "sunshine laws," outline the procedures to request records and attend meetings held by elected representatives. They are essential in ensuring that government operates openly and honestly with its citizens.

The Nebraska Public Records Laws (Neb. Rev.Stat. § 84-712 to § 84-712.09, enacted in 1866) and the Open Meetings Act (§ 84-1407 to § 84-1414, enacted in 1975) promote government transparency, public participation, and accountability in Nebraska.

Public Records Laws

Nebraska's first Public Records law in 1866 granted citizens of the territory of Nebraska and other interested persons the right to examine public records during business hours. The act has since been amended, allowing the public to make memoranda and abstracts from public records (1961 – LB505) and access copies of public documents (2000 – LB628).

Today, Nebraska Public Records laws grant citizens and interested persons the right to examine, make memoranda, or obtain copies of public records from the document's custodian. Requests for public records need not provide a reason, as confirmed by the Nebraska Supreme Court.

Individuals submit written requests to a designated employee of a state agency to access or copy records. Public records include any record or document belonging to the state, county, city, village, political subdivision, or

tax-supported district, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Once a record is deemed public, the information remains public even when maintained in a computer file.¹

A person can make copies using their own equipment on the premises of the record custodian or a mutually agreed-upon location. Record custodians must make copies if they have the necessary equipment and may charge a fee not exceeding the actual added cost of making the copies. If the requested records are available on an agency's website and the requester has internet access, the custodian can provide the website location.²

However, not all records under the control of an agency must be released to the public. Section 84-712.05 identifies 24 documents that custodians may withhold from the public, such as education records with personal information, documents containing trade secrets, academic and scientific research, and medical records. Additionally, a member of the Legislature can prohibit the release of certain records related to their official duties.

Custodians must respond to records requests within four days, either providing access or copies, or a written denial with a legal basis. If the custodian cannot complete the request within four days, they must provide an estimated date and cost in writing, and the requester may adjust their request.²

The requester then has ten days to determine if they want to proceed according to their original request, modify request, or, if applicable, appeal the denial of their submission to the attorney general. A requestor may also seek a writ of mandamus from an applicable district court as provided under § 84-712.03 to compel the release of the requested documents by the record custodian.²



Image Credit: Unicameral Update



Federal Freedom of Information Act

The Freedom of Information Act (FOIA) grants the public a statutory right of access to records created or obtained by federal agencies and under their control at the time of the request.³ Introduced in 1966 and enacted in 1967⁴, FOIA replaced the public disclosure section of the Administrative Procedures Act.⁵

A person or entity making a FOIA request must submit the request in writing, identifying the information or documents requested. An agency must promptly provide the record unless the release of the material is prohibited.⁶ An agency must determine whether to comply with the request within 20 days.⁷

FOIA requires agencies to release certain records without anyone making a request. The information that is automatically released includes information describing the agency organization; final agency opinions; orders from adjudicating a case; and records previously released by the agency that are likely to be requested again or have been requested three or more times.⁸ An example of often requested information is the Federal Bureau of Investigation's (FBI) private file on [Martin Luther King Jr.](#), which has been made available on its website.⁹

These laws require that custodians of public records must promptly provide requested documents unless an applicable exemption prohibits the release of the information.

FOIA contains nine specific exemptions, such as personnel and medical files, classified information, confidential business information, and active law enforcement investigation records.¹⁰ The Freedom of Information Reform Act of 1986 added three exclusions, allowing government agencies to withhold certain public records and information from disclosure, including:

1. Documents relating to the existence of confidential, active law enforcement investigations and proceedings;
2. Information that would lead to the identity of an informant participating in an investigation conducted by the FBI when the informant's identity has not been disclosed; and
3. Foreign intelligence and counterintelligence information obtained by the FBI.¹¹

Open Meetings Act

The Nebraska Open Meetings Act secures the public's right to attend all meetings of public bodies in the state. Meetings are defined as any gathering of public bodies for the purposes of briefing, discussion of public business, formation of tentative policy, or taking any action. Chance encounters, travel, or attendance at conferences by public officials do not count as meetings.

The right to attend all meetings of public bodies is not absolute. All meetings of governmental bodies must be open to the public, "except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act to be closed to the public." The Open Meetings Act allows any public body to hold a closed session by an affirmative vote of the majority of its members. The Nebraska Attorney General has opined that the Act does not apply to the Nebraska Legislature because Article III, Section 11 of the Nebraska Constitution provides public access to legislative activities.¹²

The Open Meetings Act clarifies that any person may attend and observe public meetings of government bodies and have access to the records discussed during the meeting. The Act also requires public bodies to provide public notice of meetings at least 24 hours in advance, including the meeting's time, date, and place, as required under Neb. Rev. Stat. § 84-1411.

The Nebraska Open Meetings Act and public records laws and the federal Freedom of Information Act are essential laws promoting government transparency and accountability. These laws ensure that the public can access critical information, participate in decision-making that affects their lives, and hold elected representatives and other government officers accountable for their decisions.

References

1. Neb. Rev. Stat. § 84-712.01.
2. Neb. Rev. Stat. § 84-712.
3. U.S. Dept. of Justice v. Tax Analysts, 492 U.S. 145 (1989)
4. [112 Cong. Rec. H13641-42 \(daily ed. June 20, 1966\) \(Statement of Rep. John Moss describing efforts to enact FOIA\).](#)
5. United States Department of Justice Guide to the Freedom of Information Act. ([Page 6, History of FOIA](#)).
6. [5 U.S.C. § 552\(a\)\(3\)\(A\)](#)
7. [5 U.S.C. § 552 \(a\)\(6\)\(A\)](#)
8. [5 U.S.C. § 552 \(a\)\(1\) – \(a\)\(2\)](#)
9. See Federal Bureau of Investigations investigative file on [Martin Luther King Jr.](#)
10. [5 U.S.C. § 552\(b\)](#)
11. [5 U.S.C. § 552\(c\)\(1\)-\(c\)\(3\)](#)
12. See: [Mike Hilgers, Nebraska Attorney General: Outline of Nebraska Open Meetings \(A\)\(4\)](#). (Op. Att'y Gen. No. 120 (July 25, 1985))