

conduct of its duties. Special meetings may be called in accordance with this section and the Open Meetings Act. Five members of the board shall constitute a quorum.

(2) The public shall be admitted to all meetings of the State Board of Education except to such closed sessions as the board may direct in accordance with the Open Meetings Act. The board shall cause to be kept a record of all public meetings and proceedings of the board. The commissioner, or his or her designated representative, shall be present at all meetings except when the order of business for the board is the selection of a Commissioner of Education.

(3) The members of the State Board of Education shall receive no compensation for their services but shall be reimbursed for actual and essential expenses incurred in attending meetings or incurred in the performance of duties as directed by the board as provided in sections 81-1174 to 81-1177.

85-104. Board of Regents; meetings; open to public; closed sessions; record of meetings; expenses.

All meetings of the Board of Regents shall be open to the public. The board may hold closed sessions in accordance with the Open Meetings Act. Public record shall be made and kept of all meetings and proceedings of the board. The regents shall meet at least twice each year at the administration building. They shall receive for their services no compensation, but they may be reimbursed their actual expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Nebraska Public Records Law

Nebraska's statutory definition of public records not only declines which records are public, but provides for the rights to examine public records and make memoranda or abstracts from them free of charge. A person can also get a certified copy of a public record for a small charge. Photocopies of records may normally be obtained from offices with photocopying facilities for the cost of copying.

The statute essentially defines a public record as any record or document, regardless of physical form, which belongs to or was prepared by this state, any county, cit, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of these. It is still a public record even if in computer form.

The law particularly indicated that wherever the record involved deals with the financial aspects of government, the definition of public record is to be liberally construed "in order that the citizens of this state shall have full rights to know of, and have full access to information on the public finances of the government and the public bodies and entities created to serve them."

The basic principle is that all government documents are public records unless expressly designated otherwise by the Public Records Law or by other statutory exceptions. The exceptions which are set forth in Chapter 84 of the statutes are generally as follows:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has elected not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as it existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in number (5), in any form concerning any person, and also records of elections filed under section 44-2821;

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

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

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training. This subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

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

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

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations;

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

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

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

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

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

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

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, job application materials means employment applications, resumes, reference letters, and school transcripts, and finalist means any applicant who is offered and who accepts an interview by a public body or its agents, representatives, or consultants for any public employment position; and

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

The same statute that the Attorney General may be enlisted to assist in obtaining a public record if the officers of the public body refuse to disclose it to the public. Courts are given the power or order a public body, by a mandamus proceeding, to turn over a record, and if the public essentially wins the legal action, then reasonable attorney's fees and other litigation costs are also paid by the public body which was wrongfully withholding the public record.

Additionally, where a record is partially private and partially public, the law provides that the public body is required to furnish the public portion after deletion of the confidential portion or portions.

In one area, records which are normally private may become public: records and documents disclosed at a public meeting. Under our public meetings law, once a governmental unit uses a record as evidence or support as disclosed information at a public meeting, then that record becomes public for all purposes.

Exceptions to Public Record Law Pertaining to Particular Subjects

Scattered throughout our statutes, there appear various laws which provide for confidentiality of a few kinds of documents.

For example,

(1) an area in which access is greatly restricted is in the area of records prepared or kept on patients and inmates of our various correctional and mental health facilities governed by the Department of Public Institutions - the Beatrice State Developmental Center, the Nebraska Orthopedic Hospital, the Nebraska Veterans' Home, the hospitals for the mentally ill, various skilled nursing care and intermediate care facilities as are established by the Department, the Nebraska Hospital for the Tuberculous, the Nebraska Penal and Correctional Complex, and the State Reformatory, the Youth Development Center-Kearney and the Youth Development Center-Geneva. With regard to the records pertaining to individuals who are either patients or inmates, Nebraska Revised Statute 83-109 expressly provides that those records are accessible only to the department, a legislative committee, the Governor, any federal agency requiring medical records to adjudicate claims for federal benefits, any public or private agency under contract to provide facilities, programs and patient services, upon order of a judge or court, in accordance with sections 20-161 to 20-166 (providing access to certain records of a person with developmental disabilities or of a mentally ill individual), to the Nebraska State Patrol pursuant to section 69-2409.01, or to those portions of the record required to be released to a victim as defined in section 29-119 in order to comply with the victim notification requirements pursuant to subsections (4) and (5) of section 81-1850.

A patient, or his or her legally authorized representative, may authorize the specific release of his or her records, or portions thereof, by filing with the department a signed written

consent. The only other way to obtain those records legally, therefore, from a public standpoint would be to seek a court order in a filed lawsuit.

Several other statutes provide for a degree of confidentiality for specific types of records. Those statutes prohibit the release of:

(2) The names of persons drawn to serve on any jury and all lists of potential jurors, except by court order, Section 25-1635 (Reissue 1995).

(3) Any registered voter's name, address and telephone number who has filed an affidavit with the election commissioner asking this information to remain confidential, Section 32-330, 32-331.

(4) Any information whose release would cause the federal government to deny funds, services, or essential information to a state agency, Section 84-712.08 (Reissue 1999).

(5) All adoption papers, except as provided in the Nebraska Indian Child Welfare Act, or by a court order, Section 43-113 (Reissue 1998).

(6) Information on the rights-of-way for a proposed highway until after the highway's route has been publicly announced, Section 39-1364 (Reissue 1998).

(7) Information about any source of air, land, or water pollution which the source's owner declares to be a trade secret (emission data which is required by the federal government is public, however), Section 81-1527 (Reissue 1999).

(8) Information which the Commissioner of Labor demands from an employer in order to enforce certain labor laws, except that which is needed as evidence in court, Section 48-612 (Cum. Supp. 2002).

(9) The name and report of anyone who warns the Department of Insurance of any insurance law violations, Section 44-393 (Reissue 1998).

(10) The names of a bank's depositors and creditors which are included in any report to the Director of Banking and Finance, Section 8-112 (cum. Supp. 2002).

(11) Slaughter livestock purchasers' records which have been examined by the Department of Agriculture, except when needed as evidence in court, Section 54-1807 (Reissue 1998).

(12) Records and documents prepared by a metropolitan transit authority for use in labor negotiations, actions, or proceedings, Section 14-1814 (Cum. Supp. 2002).

(13) Information furnished to the State Board of Examiners of Land Surveyors by applicants for surveyor licenses, Section 81-8,110.14 (Reissue 2003).

(14) The financial records of persons, corporations, and government subdivisions which have been examined by the tax commissioner, except for use in court proceedings in some cases, 77-27,119(6) (Cum. Supp.2002).

See Also Section 77-2711(7) (Cum. Supp.2002) (Sales Tax - sellers and retailers); Section 77-5544 (Cum. Supp. 2002) (Invest Nebraska Act - company records)

((15) Juvenile court documents which are medical, psychological, psychiatric and social welfare reports and the records of juvenile probation officers as they relate to individual proceedings in the juvenile court, as provided in Section 43-2, 108 (Reissue 1998).

Presumption of Openness

In most cases, the presumption pertaining to any governmental record is that it is a public record, and under our laws, the individual agency denying a request is required either to furnish the record or to show the valid reason why it is not permitting examination of the record.

Criminal History Information

Nebraska has a separate statute governing the security, privacy and dissemination of criminal history information, found at Nebraska Revised Statute, Sections 29-3501 through 29-3528. Criminal history information means that information collected by criminal justice

agencies on individuals consisting of personally identifiable descriptions and notations about the issuance of arrest warrants, arrests, detentions, indictments, charges by information or by other formal criminal charge method, and any disposition arising out of such arrests, charges, sentencing, correctional supervision, and release. The term does not include, however, intelligence or investigative information.

All criminal history record information is public, under Nebraska Law, with the specific exception that one year after an arrest is made, if there has been no prosecution and there is no active prosecution pending, the record of the arrest itself is sealed and no longer public. However, if the subject of the record is currently the subject of prosecution of correctional control as a result of a separate arrest, or is currently an announced candidate for or holder of public office, or has made a notarized request for the release of such record to a specific person, or if the record is simply sought without the name of the individual as part of a survey, then those arrest records are also available. Otherwise, all criminal history record information is public record when it is in the hands of any criminal justice agency. Criminal justice agency does include investigative agencies such as the state police, the city or village police forces, sheriffs' offices, probation offices, as well as the courts themselves.

The statute, because of possible confusion on what is and what is not covered by the term "public record" specifically makes four classes of records public in Section 29-3521. That law provides that information consisting of the following classifications is public record:

(1) Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, or photographs taken in conjunction with an arrest for purposes of identification of the arrested person;

(2) Original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies;

(3) Court records of any judicial proceedings; and

(4) Records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, replication, or renewal of driver's or other operator's licenses.

The criminal history record law, passed in 1978 and slightly modified in 1979, resolves most, though probably not all, of the questions as to which criminal records are available and from whom. The general rule is that they all are, except for investigative records and in a few cases old arrest records where there was no prosecution, as mentioned above.

Nebraska Open Records Law

Neb. Rev. Stat. Sections 84-712 through 84-712.09

84-712. Public records; free examination; memorandum and abstracts; copies; fees.

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

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

(3) (a) Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in

any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies.

(b) Except as otherwise provided by statute, the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual cost of making the copies available shall not exceed the amount of the reasonably calculated actual cost of the photocopies, (ii) for printouts of computerized data on paper, the actual cost of making the copies available shall include the reasonably calculated actual cost of the computer run time, any necessary analysis and programming, and the production of the report in the form furnished to the requester. State agencies which provide electronic access to public records through a gateway service shall obtain approval of their proposed reasonable fees for such records pursuant to sections 84-1205.02 and 84-1205.03, if applicable, and the actual cost of making the copies available may include the approved fee for the gateway service.

(c) This section shall not be construed to require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record.

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

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate for the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

84-712.01 Public records; right of citizens; full access; fee authorized.

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

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

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

right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

84-712.02. Public records; claimants before United States Department of Veterans Affairs; certified copies free of charge.

When it is requested by any claimant before the United States Department of Veterans Affairs or his or her agent or attorney that certified copies of any public record be furnished for the proper and effective presentation of any such claim in such department, the officer in charge of such public records shall furnish or cause to be furnished to such claimant or his or her agent or attorney a certified copy thereof free of charge.

84-712.03. Public records; denial of rights; remedies.

Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

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

(2) Petition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections. This determination shall be made within fifteen calendar days of the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply. If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (a) bring suit in the trial court of general jurisdiction or (b) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days of its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders.

Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the docket over all other cases and shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

84-712.04. Public records; denial of rights; public body; provide information.

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial.

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requestor of any administrative or judicial right of review under section 84-712.03.

(20 Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

84-712.05. Records which may be withheld from the public; enumerated.

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

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person, and also records of elections filed under section 44-2821;

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

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

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

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

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

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations;

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

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

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

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

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

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

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84- 1409. For purposes of this subdivision, job application materials means employment applications, resumes, reference letters, and school transcripts, and finalist means any applicant who is offered and who accepts an interview by a public body or its agents, representatives, or consultants for any public employment position; and

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

84-712.06. Public record, portion provide; when.

Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.

84-712.07. Public records; public access; equitable relief; attorney's fees; costs.

The provisions of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84- 1413 pertaining to the rights of citizens to access to public records may be enforced by equitable relief, whether or not any other remedy is also available. In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.

84-712.08. Records; federal government; exception.

If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 would cause the denial of any funds, services, or essential information from the United States Government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

Note: "This act" includes sections 84-712, 84-712.03 to 84-712.01, and 84-1413.

84-712.09 Violation; penalty.

Any official who shall violate the provision of sections 1 to 8 of this act shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

Note: "Sections 1 to 8 of this act" include sections 84-712, 84-712.01, and 84-712.03 to 84-712.08.

**Nebraska Records Management Act
Neb. Rev. Stat. Section 84-1201 through 84-1227**

The Nebraska Records Management Act is very comprehensive and includes provisions dealing with the creation of a State Records Board and various provisions relating to the records management of state agencies. Only the most pertinent sections are reproduced herein.

84-1201. Legislative intent.

The Legislature declares that:

(1) Programs for the systematic and centrally correlated management of state and local records will promote efficiency and economy in the day-to-day record-keeping activities of state and local governments and will facilitate and expedite governmental operations;

(2) Records containing information essential to the operations of government, and to the protection of the rights and interests of persons, must be safeguarded against the destructive effects of all forms of disaster and must be available as needed; wherefore it is necessary to adopt special provisions for the selection and preservation of essential state and local records, thereby insuring the protection and availability of such information;

(3) The increasing availability and use of computers is creating a growing demand for electronic access to public records, and agencies should use new technology to enhance public access to public records;

(4) There must be public accountability in the process of collecting, sharing, disseminating, and accessing public records;

(5) The Legislature has oversight responsibility for the process of collecting, sharing, disseminating, and providing access, including electronic access, to public records and establishing fees for disseminating and providing access;

(6) Several state agencies, individually and collectively, are providing electronic access to public records through various means, including gateways; and

(7) There is a need for a uniform policy regarding the management, operation, and oversight of systems providing electronic access to public records.

84-1202 Terms defined

For purposes of the Records Management Act, unless the context otherwise requires:

(1) Agency means any department, division, office, commission, court, board, or elected, appointed, or constitutional officer, except individual members of the Legislature, or any other unit or body, however designated, of the executive, judicial, and legislative branches of state government or of the government of any local political subdivision;

(2) Agency head means the chief or principal official or representative in any such agency or the presiding judge of any court, by whatever title known. When an agency consists of a single official, the agency and the agency head are one and the same;

(3) State agency means an agency of the state government;

(4) Local agency means any agency of a local political subdivision, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act;

(5) Local political subdivision means any county, city, village, township, district, authority, or other public corporation or political entity, whether existing under charter or general law, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. Local political subdivision does not include a city of the metropolitan class or district or other unit which by law is considered an integral part of state government.

(6) Record means any book, document, paper, photograph, microfilm, sound recording, magnetic storage medium, optical storage medium, or other material regardless of physical form or characteristics created or received pursuant to law, charter, or ordinance or in connection with any other activity relating to or having an effect upon the transaction of public business;

(7) State record means a record which normally is maintained within the custody or control of a state agency or any other record which is designated or treated as a state record according to general law;

(8) Local record means a record of a local political subdivision or of any agency thereof unless designated or treated as a state record under general law;

(9) Essential record means a state or local record which is within one or the other of the following categories and which shall be preserved pursuant to the Records Management Act:

(a) Category A. Records containing information necessary to the operations of government under all conditions, including a period of emergency created by a disaster; or

(b) Category B. Records not within Category A but which contain information necessary to protect the rights and interests of persons or to establish or affirm the powers and duties of state or local governments in the resumption of operations after a disaster;

(10) Preservation duplicate means a copy of an essential record which is used for the purpose of preserving the record pursuant to the act;

(11) Disaster means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other conditions of extreme peril resulting in substantial injury or damage to persons or property within this state, whether such occurrence is caused by an act of nature or of humans, including an enemy of the United States;

(12) Administrator means the State Records Administrator;

(13) Board means the State Records Board;

(14) Electronic access means collecting, sharing, disseminating, and providing access to public records electronically;

(15) Gateway means any centralized electronic information system by which public records are provided through dial-in modem or continuous link;

(16) Public records includes all records and documents, regardless of physical form, of or belonging to this state or any agency, branch, department, board, bureau, commission, council, subunit, or committee of this state except when any other statute expressly provides that particular information or records shall not be made public. Data which is a public record in its original form shall remain a public record when maintained in computer files; and

(17) Network manager means an individual, a private entity, a state agency, or any other governmental subdivision responsible for directing and supervising the day-to-day operations and expansion of a gateway.

84-1203. Secretary of State; State Records Administrator; duties.

The Secretary of State is hereby designated the State Records Administrator, hereinafter called the administrator. The administrator shall establish and administer, within and for state and local agencies, (1) a records management program which will apply efficient and economical methods to the creation, utilization, maintenance, retention, preservation, and disposal of state and local records, (2) a program for the selection of preservation of essential state and local records, (3) establish and maintain a depository for the storage and service of state records, and advise, assist, and govern by rules and regulations the establishment of similar programs in local political subdivisions in the state and (4) establish and maintain a central microfilm agency for state records and advise, assist, and govern by rules and

regulations the establishment of similar programs in state agencies and local political subdivisions on the State of Nebraska.

84-1204. State Records Board; established; members; duties; meetings.

(1) The State Records Board is hereby established. The board shall:

- (a) Advise and assist the administrator in the performance of his or her duties under the Records Management Act;
- (b) Provide electronic access to public records through a gateway;
- (c) Develop and maintain a gateway or electronic network for accessing public records;
- (d) Provide appropriate oversight of a network manager;
- (e) Approve reasonable fees for electronic access to public records pursuant to sections 84-1205.02 and 84-1205.04;
- (f) Have the authority to enter into or renegotiate agreements regarding the management of the network in order to provide citizens with electronic access to public records;
- (g) Explore ways and means of expanding the amount and kind of public records provided through the gateway or electronic network, increasing the utility of the public records provided and the form in which the public records are provided, expanding the base of users who access public records electronically, and if appropriate, implementing changes necessary for such purposes;
- (h) Explore technological ways and means of improving citizen and business access to public records and, if appropriate, implement the technological improvements;
- (i) Explore options of expanding the gateway or electronic network and its services to citizens and businesses;
- (j) Have the authority to grant funds to political subdivisions for the development of programs and technology to improve electronic access to public records by citizens and businesses consistent with the act; and
- (k) Perform such other functions and duties as the act requires.

(2) In addition to the administrator, the board shall consist of:

- (a) The Governor or his or her designee;
- (b) The Attorney General or his or her designee;
- (c) The Auditor of Public Accounts or his or her designee;
- (d) The State Treasurer or his or her designee;
- (e) The Director of Administrative Services or his or her designee;
- (f) Three representatives appointed by the Governor to be broadly representative of banking, insurance, and law groups; and
- (g) Three representatives appointed by the Governor to be broadly representative of libraries, the general public, and professional members of the Nebraska news media.

(3) The administrator shall be chair person of the board. Upon call by the administrator, the board shall convene periodically in accordance with its rules and regulations or upon call by the administrator.

(4) Six members of the board shall constitute a quorum, and the affirmative vote of six members shall be necessary for any action to be taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(5) The representatives appointed by the Governor shall serve staggered three-year terms as the Governor designates and may be appointed for one additional term. Members of the board shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

84-1205.03. State agency; electronic access to public records; approval required; when; one-time; courts; report; fees.

(1) Any state agency other than the courts or the legislature desiring to enter into an agreement to or otherwise provide electronic access to public records through a gateway for a fee shall make a written request for approval to the board. The request shall include (a) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (b) the public records which are the subject of the contract or proposed electronic access fee, (c) the anticipated or actual timeline for implementation, and (d) any security provisions for the protection of confidential or sensitive records. The board shall take action on such request in accordance with section 84-1205.02 and after a public hearing within thirty days after receipt. The board may request a presentation or such other information as it deems necessary from the requesting state agency.

(2) A state agency other than the courts or the Legislature may charge a fee for electronic access to public records without the board's approval for a one-time sale in a unique format. The purchaser may object to the fee in writing to the board, and the one-time fee shall then be subject to approval by the board according to the procedures and guidelines established in sections 84-1205 to 84-1205.04.

(3) Courts or the Legislature providing electronic access to public records through a gateway for a fee shall make a written report. The report shall be filed with the State Records Board by the State Court Administrator for the courts and the chairperson of the Executive Board of the Legislative Council for the Legislature. The report shall include (a) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (b) the public records which are the subject of the contract or proposed electronic access fee, (c) the anticipated or actual timeline for implementation, and (d) any security provisions for the protection of confidential or sensitive records. The State Records Board may request a presentation or such other information as it deems necessary. The courts and the Legislature shall take into consideration any recommendation made by the State Records Board with respect to such fees.

(4) Courts and the Legislature may charge a fee for electronic access to public records for a one-time sale in a unique format without providing a report to the board as required under subsection (3) of this section.

84-1205.06 Public record; copies; media; denial of request; effect; appeal.

(1) If a state agency is required to provide a copy of public records on request, a person requesting a copy of a public record may elect to obtain it in any and all media in which the agency is capable of providing it. No request for a copy of public record in a particular medium shall be denied on the ground that the custodian has made or prefers to make the public record available in another medium.

(2) A state agency may deny a request for a copy of a public record available in a particular medium if:

- (a) The request is unreasonably complicated;
- (b) The request specifies a medium not regularly used by the state agency and would cause undue time or expense for the state agency to comply with the request; or
- (c) The public record is available in the requested medium from another source at a fee equal to or lower than any fee that would be charged by the state agency.

(3) A state agency may not deny a request for paper copies of public records.

(4) The requester may appeal a decision by a state agency to deny a request for a copy of a public record in a particular medium in writing to the board. The denial shall then be subject to the approval of the board based upon its determination of the state agency's compliance with this section.

(5) If a state agency provides copies of public records in a particular medium, the state agency shall provide notice not less than ninety calendar days prior to discontinuing such

practice. The notice shall be published at least three times in a newspaper of general circulation.

84-1211. Records; confidential; protection.

(1) When an essential record is required by law to be treated in a confidential manner, the administrator, in effectuating the purposes of the Records Management Act, shall protect its confidential nature, as well as that of any preservation duplicate or other copy thereof. Any hospital or medical record submitted to the administrator for microfilming or similar processing shall be made accessible in a manner consistent with the access permitted similar records under sections 71-961 and 83-109.

(2) Nothing in the Records Management Act shall be construed to affect the laws and regulations dealing with the dissemination, security, and privacy of criminal history information under the Security, Privacy, and Dissemination of Criminal History Information Act.

Nebraska Free Flow of Information Act (Shield Law)

Neb. Rev. Stat. Sections 20-144 through 20-148

Free Flow of Information Act

20-144. Finding by Legislature. The Legislature finds:

(1) That the policy of the State of Nebraska is to insure the free flow of news and other information to the public, and that those who gather, write, or edit information for the public or disseminate information to the public may perform these vital functions only in a free and unfettered atmosphere;

(2) That such persons shall not be inhibited, directly or indirectly, by governmental restraint or sanction imposed by governmental process, but rather that they shall be encouraged to gather, write, edit, or disseminate news or other information vigorously so that the public may be fully informed;

(3) The compelling such persons to disclose a source of information or disclose unpublished information is contrary to the public interest and inhibits the free flow of information to the public;

(4) That there is an urgent need to provide effective measures to halt and prevent this inhibition;

(5) That the obstruction of the free flow of information through any medium of communication to the public affects interstate commerce; and

(6) That sections 20-144 to 20-147 are necessary to insure the free flow of information and to implement the first and fourteenth amendments and Article I, section 8, of the United States Constitution, and the Nebraska Constitution.

20-145. Terms, defined. As used in sections 20-144 to 20-147, unless the context otherwise requires:

(1) Federal or state proceeding shall include any proceeding or investigation before or by any federal or state judicial, legislative, executive, or administrative body;

(2) Medium of communication shall include, but is not limited to, any newspaper, magazine, other periodical, book pamphlet, news service, wire service, news or feature syndicate, broadcast state or network, or cable television system;

(3) Information shall include any written, audio, oral or pictorial news or other material;

(4) Published or broadcast information shall mean any information disseminated to the public by the person from whom disclosure is sought;

(5) Unpublished or nonbroadcast information shall include information not disseminated to the public by the person from whom disclosure is sought, whether or not