

## LEGISLATIVE BILL 86

Approved by the Governor May 23, 1979

Introduced by Murphy, 17

AN ACT to amend sections 84-712 and 84-712.01, Reissue Revised Statutes of Nebraska, 1943, and sections 84-712.03 and 84-1413, Revised Statutes Supplement, 1978, relating to state officers; to clarify provisions; to define a term; to require notice of denial of access as prescribed; to provide for enforcement of rights as prescribed; to provide penalties; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 84-712, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-712. 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 34-712.01, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

Sec. 2. That section 84-712.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-712.01. (1) Except where 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) 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 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.

Sec. 3. That section 84-712.03, Revised Statutes Supplement, 1973, be amended to read as follows:

84-712.03. 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 said public record can be served. ~~Any official who shall violate the provisions of sections 84-712 to 84-712.03 shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.~~ or (2) petition the Attorney General to review the record to determine whether it may be withheld from public inspection. 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, the public body shall be ordered to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure 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.

Sec. 4. (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, correlated to specific reasons for the denial, correlated to specific portions of the records, including citations to the particular exception under section 2 of this act 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 requester of any administrative or judicial right of review under section 3 of this act.

(2) 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.

Sec. 5. 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 tax-supported educational institution maintaining such records, other than routine directory information;

(2) Medical records, other than records of births and deaths, in any form concerning any person, and also records of elections filed under section 44-2921, Revised Statutes Supplement, 1978;

(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, Reissue Revised Statutes of Nebraska, 1943;

(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, the investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training;

(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 physical security of public property such as guard schedules or lock combinations; and

(9) Personally identified private citizen account payment information held by public utilities.

Sec. 6. 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.

Sec. 7. The provisions of this act 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.

Sec. 8. If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of this act 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.

Sec. 9. That section 84-1413, Revised Statutes Supplement, 1978, be amended to read as follows:

84-1413. (1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted, or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a city which utilizes an electronic voting device which allows the yeas and nays of each council member to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days, or prior to the next convened meeting, whichever occurs earlier.

Sec. 10. Any official who shall violate the provisions of sections 1 to 9 of this act shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

Sec. 11. That original sections 84-712 and 84-712.01, Reissue Revised Statutes of Nebraska, 1943, and sections 84-712.03 and 84-1413, Revised Statutes Supplement, 1973, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.