



COMMONWEALTH OF KENTUCKY  
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20-ORD-017

February 5, 2020

In re: J. Gregory Troutman/Office of the Governor

*Summary:* Request for “documents evidencing communications” by the Governor or his administrative staff with the Department of Highways on certain subjects, which was unlimited in temporal scope, did not comply with KRS 61.872(3)(b), which requires a request for copies by mail to describe records precisely.

*Open Records Decision*

The question presented in this appeal is whether the Office of the Governor (“Governor’s Office”) violated the Open Records Act (“the Act”) in the disposition of a December 3, 2019, request by attorney J. Gregory Troutman (“Appellant”) for copies of certain records relating to a highway project, a parcel of real estate, or two named individuals. For the reasons that follow, this Office finds no violation of the Act.

In his letter, transmitted by fax, Appellant requested “[a]ll documents evidencing communications between any employee and/or representative of the Commonwealth of Kentucky Transportation Cabinet, Department of Highways and Governor Matthew Bevin” or “any employee of [his] administrative staff ... regarding” three subjects. Those subjects included “the project to reconstruct US 42 and widen from 2 lanes to 3 lanes from Jefferson/Oldham County Line to Ridgemoor Drive”; “the residential real estate located at 12920 U.S. Highway 42, Prospect, KY 40059”; and “Joseph J. Gerth, III and/or Mary A. Gerth.”

The Governor's Office issued a response on December 9, 2019,<sup>1</sup> asserting that the request was unreasonably burdensome under KRS 61.872(6) and did not "precisely describe[] the public records" as required by KRS 61.872(3)(b). In particular, the Governor's Office stated that "documents evidencing communications" was a "vague categor[y]," that the requests "relate[d] to very broad topics that lack any kind of specificity that would make a search reasonable," and that Appellant had "failed to include any time-period limitation to narrow the otherwise broad and vague request."

This Office received this appeal on January 2, 2020. On January 14, 2020, due to the intervening change of administration since December 9, 2019, the Governor's Office declined to respond substantively to the appeal because "no current employee of the Office of the Governor participated in the response or has any knowledge regarding the breadth of the search necessary to locate any potentially responsive records."

KRS 61.872(3)(b) requires a public agency to mail copies of records only "after [the requester] precisely describes the public records which are readily available within the public agency." A description is precise "if it describes the records in definite, specific, and unequivocal terms." 98-ORD-17 (internal quotation marks omitted). This standard is generally not met by requests that are unlimited in temporal scope or do not "describe records by type, origin, county, or any identifier other than relation to a subject." 13-ORD-077.

In 15-ORD-212, a request for records "documenting the contacts and/or communications" by detectives of the Lexington Police Department with judges, law enforcement agencies, prosecutors, or "any person of the public nature," which was unlimited in temporal scope, did not meet the standard for precise description. Even with a specified temporal scope, a request for copies of "[a]ny and all records related to the granting of easements by the City of Indian Hills to its property owners for the purpose of connecting to any MSD sewer line ... from January 1, 1990 to January 1, 1999" was properly denied for lack of a precise description. 00-ORD-79. Similarly, a request specifying the temporal scope for "records indicative of [a named individual's] assistance with Kentucky State

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<sup>1</sup> Since the record does not reflect whether the fax transmission reached the Governor's Office before the close of business on December 3, 2019, this Office makes no finding as to whether the response was timely under KRS 61.880(1).

Police matters, including tips given to [the] department” failed to describe an identifiable class of records and was properly denied. 13-ORD-077.

Here, Appellant requested “documents evidencing communications” by the Governor or his administrative staff with the Department of Highways on certain topics, with no limitation in temporal scope. “Documents evidencing communications” is similar in its ambiguity to “records indicative of assistance.” The request fails to identify a specific set of records limited “by type ... or any identifier other than relation to a subject.” 13-ORD-077. Whether a document “evidences” a communication is a characterization subject to interpretation, rendering the description “so nonspecific as to preclude the custodian from determining what, if any, existing records it might encompass.” 96-ORD-101.

Because the request did not “precisely describe” records within the meaning of KRS 61.872(3)(b), the Governor’s Office did not violate the Act by requiring greater specificity. Since this finding is dispositive of the appeal, it is unnecessary to address the agency’s alternative position that the request created an unreasonable burden under KRS 61.872(6).

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General should be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceedings.

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20-ORD-017

Page 4

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