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In re: James Barnett/Kentucky State Police

Summary: Kentucky State Police (“KSP”) violated the Open Records Act (“the Act”) by failing to make final disposition of an open records request within three business days.

Open Records Decision

James Barnett (“Appellant”) requested that KSP provide “an electronic copy of the Uniform Citation File database held in the KyOPS records management system, inclusive of all its publicly available data fields,” for citations issued from 2014 to 2019.¹ On January 28, 2020, KSP responded that “[d]ue to the storage location of this file, it cannot be determined at this time if records responsive to your request are in existence and possessed by [KSP].” KSP further stated that “[t]he records or a letter stating the status of [Appellant’s] request should be mailed to [Appellant] on or before February 28, 2020.” But February 28 came and went without any further communication from KSP. Thus, this appeal followed.

On appeal, KSP states that it did not send the promised status update “due to an accidental clerical oversight.” However, KSP states that it will comply with Appellant’s request in light of *Department of Ky. State Police v. Courier-Journal*, 601 S.W.3d 501 (Ky. App. 2020), in which the Court of Appeals ordered KSP to release a redacted copy of the same database Appellant has requested in this appeal. At this time, KSP is still negotiating an agreement with a third party to create a

¹ The record on appeal does not indicate when Appellant sent the request.

database capable of redacting those fields of information that are exempt from inspection.

Although KSP is currently building a new database, it was still required to make a timely disposition of Appellant's request within three business days under KRS 61.880(1). An agency may take longer than three days to produce requested records if the records are "in active use, in storage, or not otherwise available," and if it gives "a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection." KRS 61.872(5). Here, KSP's response that "it cannot be determined at this time if records . . . are in existence" was insufficient under KRS 61.872(5), since KSP was involved in litigation concerning the very database Appellant has requested and KSP must have known that the records exist. Moreover, KSP did not provide the records or any further response on February 28, 2020, the date KSP stated it would comply with the request. Thus, KSP violated the Act by failing to comply with KRS 61.880(1) and 61.872(5).

In light of *Department of Ky. State Police*, 601 S.W.3d 501, the parties agree that additional delay is necessary for KSP to comply with the court's order. However, the parties continue to dispute what redactions KSP may make to the records contained in the database once it is created. KSP asserts that it may redact dates of birth and the full names of victims, witnesses, uncharged suspects, juveniles, defendants with expunged records, and "those pending prosecution under certain conditions." This dispute is not ripe for this Office's review because KSP has neither produced the records nor made any redactions.²

² Recognizing that KSP is currently creating the database at significant expense, this Office notes that under *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013), an agency may categorically redact discrete types of information, including dates of birth, addresses, and Social Security numbers. Under *Lawson v. Office of Attorney General*, 415 S.W.3d 59, 69 (Ky. 2013), a law enforcement agency may also redact the identities of witnesses, victims, and uncharged suspects. Furthermore, under KRS 61.878(1)(l), juvenile identities and records that relate to an expunged record are confidential under KRS 610.320(3) and KRS 431.073(7), respectively. However, redactions made under KRS 61.878(1)(h) must be made on a case-by-case basis in which the agency considers the status of the prospective law enforcement investigation and any potential harm to the investigation. See *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842 (Ky. 2013).

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 shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings.

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/s/ James M. Herrick

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Distributed to:

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