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20-ORD-199

December 17, 2020

In re: Levi Henson/Richmond Police Department

**Summary:** The Richmond Police Department (“Department”) violated the Open Records Act (“the Act”) when it did not search for records responsive to a request and when it invoked an inapplicable exemption to deny the request.

***Open Records Decision***

On October 22, 2020, Levi Henson (“Appellant”) requested from the Department a copy of all investigative files related to a rape that occurred in the early 1970s. Appellant attached contemporaneous newspaper articles describing the crime. Those articles, as well as Appellant’s request, identified by name each of the men convicted of the crime. Those articles also identified the female victim, who was seventeen at the time. In a timely written response, the Department denied Appellant’s request under KRS 610.320(3) because the victim was a juvenile at the time. The Department also stated that “most records from that time period were destroyed in a flood at the old Richmond Police Department[.]” Appellant then initiated this appeal.<sup>1</sup>

Once an agency receives a request to inspect records, that agency must search for responsive records and then state whether any responsive records exist. *See, e.g.,* 19-ORD-205 (finding “no general rule” that excuses a public agency from searching for responsive records.) Here, however, the Department failed to

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<sup>1</sup> Although this Office issued a notice of appeal and invited the Department to respond to the appeal, the Department declined the invitation and refused to provide any additional response.

conduct any search for the requested records. Rather, the Department claimed that “most” of its records from that “time period” were destroyed in a flood. But the Department did not state that the records sought were destroyed in a flood. Such conduct violates the Act.

The Department violated the Act in another way. It failed to invoke the proper exemption to deny inspection of its records. Under KRS 61.880(1), a public agency that denies a request must provide the statutory basis for the denial and a brief explanation of how the exemption applies to the records at issue. Here, the Department relied upon KRS 610.320(3) to deny Appellant’s request because the victim of the crime was a juvenile. However, that provision only exempts from disclosure those law enforcement or court records pertaining to juvenile defendants. KRS 610.320(3) (referring to a “petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is fourteen (14) years of age or older at the time of the commission of the offense[.]”). There is no suggestion that the Department withheld records related to a juvenile defendant.

Despite the Department’s error, KRS 61.878(1)(a) provides that “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy” are exempt from inspection. Kentucky courts have consistently found that the identity of a sexual assault victim appearing in law enforcement records, regardless of the victim’s age, may be withheld. *Cape Publications v. City of Louisville*, 147 S.W.3d 731, 735-35 (Ky. App. 2003). Thus, the Department should redact the victim’s identity and any other personally identifiable information from the responsive records.

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 proceeding.

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Distributed to:

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