



COMMONWEALTH OF KENTUCKY
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21-ORD-004

January 13, 2021

In re: Amy Schneider/Gallatin County Sheriff's Office

Summary: The Gallatin County Sheriff's Office (the "Sheriff's Office") violated the Open Records Act (the "Act") by failing to timely respond to a request for records. The Sheriff's Office also violated the Act when it failed to state affirmatively that no records responsive to a portion of the request existed.

Open Records Decision

Amy Schneider ("Appellant") requested from the Sheriff's Office records pertaining to a specific deputy's certification and training to operate radar or other forms of speed measurement devices. Appellant also requested records documenting the calibration of the device on September 18, 2020. Although the Sheriff's Office received the request on November 14, 2020,¹ it failed to respond. This appeal followed.

On appeal, the Sheriff's Office states that its delayed response was due to the sheriff's medical absence. The Sheriff's Office also provides a copy of its delayed response, which it issued during the pendency of this appeal. In that response, the Sheriff's Office stated that "the state of Kentucky does not require a specific certification" for operation of the radar in question, "only a working knowledge of the device." The response also provided the make and model of the radar used by the deputy on the date indicated in Appellant's request. The

¹ As proof of the delivery date, Appellant provides a copy of a certified mail receipt signed by the Sheriff's Office on November 14, 2020.

Sheriff's Office also provided to Appellant the portion of the Gallatin County Sheriff's Office Policy and Procedure Manual addressing such devices.

Normally, a public agency must respond to an open records request within three business days. KRS 61.880(1). To address the novel coronavirus public health emergency, however, the General Assembly modified that requirement when it enacted Senate Bill 150 ("SB 150"), which became law on March 30, 2020, following the Governor's signature. SB 150 provides, notwithstanding the provisions of the Act, "a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt." SB 150 § 1(8)(a). Under KRS 446.030(1)(a), the computation of a statutory time period does not exclude weekends unless "the period of time prescribed or allowed is less than seven (7) days." Accordingly, under SB 150, a public agency is required to dispose of a request to inspect records within ten calendar days.

Here, the Sheriff's Office received the request on November 14, 2020, but it did not respond within ten days, as required under the Act as modified by SB 150. In this way, the Sheriff's Office violated the Act.

The Sheriff's Office also violated the Act in another way. Under KRS 61.880(1), a public agency denying a request to inspect records must state the specific exception that authorizes the agency to deny the request. The response must also include a brief explanation of how the exception applies. When no responsive records exist, the public agency must affirmatively state that as the basis for its denial. *See, e.g.,* 09-ORD-145; 98-ORD-154. Here, the Appellant requested, in part, records pertaining to a specific deputy's certification and training for the operation of radar and other similar devices. However, the Sheriff's Office did not affirmatively state that no records responsive to that portion of the request existed. Rather, it implied that no responsive records existed by stating no such training is required by the Commonwealth. Appellant had also sought records documenting that the deputy had calibrated his equipment on September 18, 2020. Again, instead of stating that no such records existed, the Sheriff's Office simply stated that the deputy could not recall whether he had calibrated his equipment that day. Because the Sheriff's Office's failed to clearly state that it possessed no records responsive to a portion of Appellant's request existed, it violated the Act.

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.

Daniel Cameron
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

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Amy E. Schneider
Sheriff Josh Neale