



COMMONWEALTH OF KENTUCKY
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21-ORD-030

February 17, 2021

In re: Lawrence Trageser/Spencer County Sheriff's Department

Summary: The Spencer County Sheriff's Department ("Department") violated the Open Records Act ("the Act") when it failed to issue a timely written response to a request to inspect records.

Open Records Decision

On March 16, 2020, Lawrence Trageser ("Appellant") requested from the Department copies of invoices or bills charging the Department for towing and impounding vehicles, boats, or trailers. The Department responded on December 17, 2020, and claimed that no responsive records existed. This appeal followed.

A public agency must respond to an open records request within three business days. KRS 61.880(1).¹ Here, the Department did not issue a response until nine months after receipt of the request. The Department fails to explain its delay. The Department thus violated the Act when it failed to issue a timely written response to the Appellant's request.

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. But here, the Appellant submitted his request before the effective date of SB 150. Thus, the Department needed to respond within three business days to this request.

In its response, the Department denied the request because it did not possess any responsive records. Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requestor to present a *prima facie* case that the requested records do exist in the agency's possession. *Bowling v. Lexington-Fayette Urb. Cty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005).

To make a *prima facie* showing, the Appellant provides copies of court orders that order the forfeiture of various items seized in connection with criminal investigations. The Appellant also provides copies of Department evidence logs showing that the Department had seized and impounded a specific truck. Although these records show that the Department has seized vehicles, they do not show that the Department has been charged fees in connection with the seizure and impoundment of those vehicles. Moreover, even if the Appellant had made a *prima facie* showing that such invoices should exist, the Department explains that it has a business relationship with a local towing company in which the company charges the related fees to the owner of the vehicle, not to the Department. Thus, the Department does not possess invoices because the company does not charge the Department.

Because the Department has explained why it does not possess responsive records, it did not violate the Act when it denied the Appellant's request.

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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Distributed to:

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