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**21-ORD-034**

February 23, 2021

In re: Jenny Patten/Transportation Cabinet

**Summary:** Because the Transportation Cabinet (“Cabinet”) failed to respond to an open records request within ten days, it violated the Open Records Act (“the Act”) as modified by Senate Bill 150. The Cabinet was not, however, required to honor a request for information, to provide a nonexistent record, or to fulfill a request that did not sufficiently describe the public records sought.

***Open Records Decision***

On December 21, 2020, Jenny Patten (“Appellant”) asked the Cabinet to provide certain documents and information relating to its employees. After the Cabinet did not respond within ten days, this appeal followed.

Normally, a public agency must respond to an open records request within three business days. KRS 61.880(1). In response to the public health emergency caused by the novel coronavirus, however, the General Assembly modified that requirement when it enacted Senate Bill 150 (“SB 150”), which became law on March 30, 2020. SB 150 provides, notwithstanding the provisions of the Act, that “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). The Cabinet violated the Act by failing to respond to the Appellant’s request within ten days.

The Act does not require public agencies to answer questions or provide information. Rather, the Act requires a public agency to make public records available for inspection. KRS 61.872; *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”). Here, the Appellant asked the Cabinet to provide “information” about how the Cabinet determines “if an employee is called to do after hours work (or is on-call).” She also requested the “compensation rate for on-call employees [who were] dispatched outside of their normal work hours” and “information regarding” Cabinet employees who were “required to work during protests, and what duties are/were required.” Those are requests for information. Under the Act, the Cabinet had no duty to provide such information.<sup>1</sup>

The Appellant also asked the Cabinet to provide “a copy of job duty outlines,” created before the current state of emergency, “for employees, working in the field.” The Cabinet responded that it has position descriptions “specific to each position,” but not “a general job duty outline.” Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist. *Bowling v. Lexington-Fayette Urban Cty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not established a *prima facie* case that the Cabinet possesses general “job duty outlines” for employees “working in the field,” and the Cabinet claims such records do not exist.

Similarly, the Appellant requested a copy of a press release issued in July of 2020, “regarding hanging political candidate signs.” The Cabinet responded that it did not issue such a press release in July 2020. However, the Cabinet provided several other documents relating to the subject. The Appellant has not presented a *prima facie* case that the specific press release she requested exists or should exist. Therefore, the Cabinet did not violate the Act when it did not produce the requested press release or general “job duty outlines.”

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<sup>1</sup> The Cabinet responded to the request after the Appellant initiated this appeal. Although it was not required to do so, the Cabinet did attempt to provide information responsive to two of the Appellant’s requests. Insofar as the Cabinet could provide records in response to the Appellant’s request, the Cabinet states that it attempted to do so.

The Appellant also requested any and all documentation, including emails, press releases, or “formal [or] informal new requirements” regarding “change of duties . . . for all field employees,” since the start of the state of emergency, including “involvement with testing sites, protests, signs, [etc.]” The Cabinet responded that its employees’ “duties should not have changed due to COVID-19” and employees were still “working within their classifications.” However, the Department provided some records relating to the wearing of masks and some general workplace guidance on COVID-19. The Appellant further requested “[d]ocuments related to freedom of speech, and usage of signs, when signs are not deemed political candidate based or advertisements.” The Department attempted to comply with this vague request by providing certain records relating to employee political activities and use of social media.

Under the Act, a request to inspect public records must describe those records in a manner “adequate for a reasonable person to ascertain the nature and scope of [the] request.” *Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008). If the request seeks copies of public records, it must “precisely describe[] the public records which are readily available within the public agency.” KRS 61.872(3)(b). The Appellant’s request for documents relating to “change of duties,” “freedom of speech,” and “usage of signs” does not meet either standard. Rather, it is an “open-ended any-and-all-records-that-relate type of request,” which does not precisely describe the records sought. *See, e.g.*, 08-ORD-058. This Office has consistently stated that “blanket requests for information on a particular subject need not be honored.” *See, e.g.*, OAG 90-83; 95-ORD-108; 13-ORD-077. Thus, the Cabinet went beyond the requirements of the Act when it attempted to fulfill these requests.

In sum, the Cabinet violated the Act when it failed to respond to the Appellant’s request within ten days. However, the Cabinet did not violate the Act with its final disposition of the 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.

Daniel Cameron  
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/s/ James M. Herrick

James M. Herrick  
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Distributed to:

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