



COMMONWEALTH OF KENTUCKY
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21-ORD-038

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In re: Lawrence Trageser/Kentucky State Police

Summary: The Kentucky State Police (KSP) did not violate the Open Records Act (“the Act”) when it denied a request for records that no longer exist.

Open Records Decision

Lawrence Trageser (“Appellant”) requested from KSP a copy of a former Commissioner’s personnel file. The Appellant also sought a copy of a sexual harassment investigation file based upon a report of sexual harassment against the Commissioner in the late 1990s to early 2000s. KSP denied the Appellant’s request for these records because they do not exist in the agency’s possession.

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 provides a decision from this Office, rendered in 2002, in which the Office held that this particular sexual harassment investigation file was subject to public inspection. *See* 02-ORD-231. According to the Appellant, this proves that the sexual harassment investigation occurred and records were created in connection with that investigation.

Although the Appellant has made a *prima facie* showing that responsive records may have existed in 2002, more than eighteen years have elapsed since that decision. In both its response to the Appellant and on appeal, KSP claims that the responsive records were likely destroyed in the course of normal business and in conformity with KSP's record retention schedule. Under that records retention schedule, the longest any of the responsive records would have been retained would have been ten years.

KSP conducted a good faith search for responsive records. However, it has concluded that no records responsive to the Appellant's request exist in its possession. KSP believes the records were destroyed, and the applicable records retention schedule supports this belief. Therefore, KSP did not violate the Act in denying 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.

Daniel Cameron
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Lawrence Trageser
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