



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-095

May 26, 2021

In re: David Pennington/Kentucky State Police

Summary: The Kentucky State Police (the “KSP”) violated the Open Records Act (“the Act”) as modified by Senate Bill 150 (“SB 150”) when it failed to respond to an open records request within ten days.

Open Records Decision

On April 7, 2021, David Pennington (“Appellant”) asked KSP to provide copies of several records related to its administration of the driver’s license testing program in Floyd County. He specifically sought phone records, testing schedules, and employee timesheets from the previous four months. The Appellant also sought records showing the salary of the officials administering the licensure tests. After receiving no response from KSP, the Appellant appealed to this Office on April 26, 2021.

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 Coronavirus, however, the General Assembly modified that requirement when it enacted Senate Bill (“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). Under KRS 446.030, when the period prescribed by statute is seven days or less, weekends and legal holidays are excluded from the computations of time. Therefore, because SB 150 provides ten days to respond, weekends or holidays are not excluded from the computation of time and a response is due within ten calendar days of receipt.

Although KSP's response was due on April 18, 2021, it failed to respond to the request until May 11, 2021.¹ On appeal, KSP admits it received the Appellant's request on April 8, 2021, but claims that it missed the deadline to respond due to staffing shortages and an inadvertent clerical oversight. KSP's failure to respond violated the Act as modified by SB 150.

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/Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Sgt. David Pennington
Michelle Harrison

¹ On May 11, after the appeal had been initiated, KSP provided the Appellant with most of the records he requested. However, KSP claimed that it did not possess phone records for some employees because the Floyd County Drivers Testing office does not have a landline phone. For that reason, all calls are forwarded to a single state-issued cell phone. Records for that phone were provided. The Appellant has not claimed that additional records should exist.