



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

21-ORD-135

July 26, 2021

In re: Alysia Santo/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) violated the Open Records Act (“the Act”) when it denied a request that precisely identified public records sought to be inspected. KSP has not carried its burden that a search for the requested records would be unduly burdensome.

Open Records Decision

On February 12, 2021, Alysia Santo (“Appellant”) submitted two requests¹ to KSP, and in the one relevant here, she sought copies “of all incident reports regarding every deadly use of force by a KSP employee from 2010 to present.”² The Appellant specified that records relating to such incidents should contain the names of the decedents, the names of all KSP employees involved, the date and location of the incident, and “other basic information regarding deadly use of force.” In a timely response, KSP claimed that the request lacked sufficient information, such as dates of incidents, the names of parties, or the location of the incidents, to conduct an efficient search. Further, due to the manner in which KSP maintains its files, KSP claimed that

¹ The Appellant also sought incident reports related to several identified persons, each of whom appear to have been civilians in officer involved shootings. KSP provided responsive records to some of the specified incidents, but claimed other incidents remained open or that KSP could not locate records responsive to other incidents.

² For one such incident, KSP claimed that the investigation in that matter was ongoing, but the Appellant provided evidence that a grand jury had returned no true bill and that the case against the officer had been dismissed. KSP then reversed course, and attempted to provide copies of the reports related to that incident. KSP apparently, however, sent the wrong case file to the Appellant. On appeal, KSP has corrected that error and any remaining claims regarding this request is now moot. *See* 40 KAR 1:030 § 6.

it needed additional time under KRS 61.872(5) to complete its search, and committed to producing responsive records “on or before April 26, 2021.” In an attempt to reduce the search time required, the Appellant then offered to narrow the scope of her request to any such deadly force incidents that occurred between 2014 and the present. KSP acknowledged receipt of the Appellant’s narrowed request, but asserted that the Appellant’s request “still implicates a large volume of records” and that it would update the Appellant “in the next day or two” after consulting with relevant individuals to provide the Appellant “with a realistic deadline.”

KSP issued its final response to the Appellant on May 5, 2021.³ It provided the Appellant with spreadsheets created by KSP’s Critical Incident Response Team (“CIRT”), which was established in 2017 to investigate officer involved shootings. According to KSP, the CIRT investigates all officer involved shootings involving KSP officers, and may, upon request, investigate officer involved shootings involving other law enforcement agencies. The spreadsheets provide the incident date, the law enforcement agency involved (including the KSP post number, if a KSP officer was involved in the incident), and in some circumstances, the result of the incident—*i.e.*, that there were no injuries, there were injuries, or a person died as a result of the incident. KSP did not provide any records relating to the incidents identified in the spreadsheets. The Appellant then initiated this appeal, and claimed that KSP violated the Act when it failed to provide the requested incident reports.

On appeal, KSP claims that the Appellant has not “precisely described” the records that she wishes to inspect. Under KRS 61.872(3)(b), a resident of the Commonwealth may inspect public records by receiving copies of such records in the mail “after he or she precisely describes the public records which are readily available within the public agency.”

KSP claims that a request seeking all incident reports related to the use of deadly force by KSP employees between 2014 and the present is not a precise description of the records sought. KSP claims that, prior to 2017 and the creation of the CIRT, each KSP post investigated its own officer involved shootings involving KSP officers employed at that post. When those investigations were initiated, they were opened as “death investigations,” and if the officer shooting was justified, then the case would be closed using the

³ In doing so, KSP also provided records responsive to the Appellant’s other request. The Appellant has not claimed that the delay between February 12 and May 5 was unreasonable, so it is not necessary to decide whether such a delay violated the Act.

label “justified homicide.”⁴ However, not all “death investigations” and “justified homicides” include officer involved shootings, because such results could also include the use of justified self-defense by civilians.⁵

According to KSP, one way it could locate records concerning officer involved shootings occurring between 2014 and 2017 would be by searching all “justified homicides” and cross referencing the names of those involved with the names of officers employed at the time of the shooting. Another way it can search for such records is to review all records in the KSP Internal Affairs branch, “which maintains ‘Response to Resistance’ administrative cases involving agency personnel using deadly force separately from all other [Internal Affairs] investigations.” After reviewing such records, KSP could then identify the date and location of the events, and coordinate with the local posts to obtain responsive records that are located at the posts. Because both of these methods of search could take a long time, KSP therefore argues that the Appellant should provide more information, such as the date and location of specific incidents, which KSP can then use to query its system for more accurate results.

Under KRS 61.880(2)(c), the public agency carries the burden of justifying its actions. KSP has acknowledged that it likely has responsive public records, and KSP has explained the search that would be required to locate responsive records created between 2014 and 2017. Without more information, the method of search described by KSP in its response does not appear to be unduly burdensome. For example, it may be true that KSP must query its system for all “justified homicides,” and review each one to determine whether the incident involved KSP officers. But KSP does not explain how many “justified homicides” must be reviewed. If there were only a few in the relevant three year period, KSP has not explained how it would be burdensome to review each one to determine whether an officer was involved. The fact that the “suspect” of a “death investigation” was an officer acting in the scope of his or her duty would presumably be ascertainable after briefly reviewing any narrative explaining the incident. Of course, the more “justifiable homicides” that require review, the longer it may take KSP to conclude its search. But a public agency may delay inspection of records by invoking KRS 61.872(5) only

⁴ KSP admits that it is capable of querying its system using the labels “death investigation” and “justified homicide.”

⁵ KSP also claims that not all officer involved shootings result in the death of the person shot. In those instances, such investigations may be closed using other monikers such as “assault” or “wanton endangerment.” But the Appellant specifically sought incidents involving the use of deadly force, eliminating the need to review incidents closed under those monikers.

if it explains that the records are in active use, storage, or are otherwise unavailable, if it provides the earliest date on which records will be available, and if it explains the reason for the delay. KSP did so originally when it claimed that responsive records would be available on April 26, 2021. But instead of claiming that it needs additional time to complete its review, KSP simply claims that the Appellant was not precise enough and therefore declined to comply with the request. Under these facts, KSP has not carried its burden in proving that the Appellant's request was not precise, or that the request is unduly burdensome under KRS 61.872(6).

Moreover, KSP already possesses sufficient information to process the Appellant's request for the incident reports between 2017 and the present. The spreadsheets it produced contain the date, location, and each KSP post involved in each shooting. KSP does not explain why it did not use these spreadsheets to locate the files of the incidents to which the spreadsheets refer, and provide responsive records. Even if it would be too burdensome to search for officer involved shooting incidents prior to 2017, KSP now catalogs all such events in one readily accessible document. KSP does not explain why it is unable to locate and provide copies of the reports generated in the officer involved shootings that are cataloged in the spreadsheet. Therefore, KSP violated the Act when it failed to provide copies of records which were precisely described.

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

#202

Distributed to:
Alysia Santo
Michelle Harrison