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24-ORD-151

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In re: Leslie Lawson/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) violated the Open Records Act (“the Act”) when it failed to note certain documents were withheld in its response to a request for records. However, KSP did not violate the Act when it redacted personal identifying information under KRS 61.878(1)(a) and confidential information under KRS 17.150(4), or when it did not provide records that it does not possess or cannot locate based on the description provided in the request.

Open Records Decision

On March 15, 2024, Leslie Lawson (“Appellant”) made a four-part request to KSP. First, he requested a copy of KSP’s General Order OM-C-3 relating to confidential informants. Second, he requested the investigative file concerning his 1997 indictment. Third, he requested the investigative file for a case identified only by the name of a detective and a 1998 circuit court case number. Finally, he requested “whole investigation files” for unidentified cases in which a named individual acted as a confidential informant in 1997 and 1998.

In response, KSP provided a copy of General Order OM-C-3 and a copy of four investigative files concerning the Appellant’s 1997 indictment. KSP noted that it had redacted information such as Social Security numbers, addresses, and telephone numbers from the investigative file under KRS 61.878(1)(a) due to the risk of identity theft. Regarding the 1998 investigative file, KSP stated it had “conducted a diligent search” but could not locate a file using only the case number the Appellant had provided. KSP denied the request for files relating to the named informant, citing KRS 197.025(2).¹ This appeal followed.

¹ KRS 197.025(2) provides that the Department of Corrections need not comply with a request from an inmate “unless the request is for a record which contains a specific reference to that individual.”

KRS 61.878(1)(a) exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” On appeal, KSP states that the information it redacted from the 1997 case files under KRS 61.878(1)(a) includes Social Security numbers, home addresses, personal telephone numbers, dates of birth, and driver’s license numbers. These types of personal information pertaining to private individuals may be categorically redacted from law enforcement records when they provide no insight into how the public agency performed its public duties. *See Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76 (2013). Accordingly, KSP did not violate the Act when it redacted these categories of information.

However, KSP failed to note in its initial response that it also withheld five pages obtained from the National Crime Information Center (“NCIC”) database. Under KRS 17.150(4), “[c]entralized criminal history records are not subject to public inspection.” As a statute prohibiting or restricting the disclosure of records, KRS 17.150(4) is incorporated into the Act by KRS 61.878(1)(l). Thus, KSP did not violate the Act when it withheld records obtained from NCIC. Nevertheless, under KRS 61.880(1), “[a]n agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” Thus, KSP violated the Act when it failed to note and explain this partial denial of the Appellant’s request.

Regarding the 1998 case file, KSP reiterates it was unable to locate a file using only a criminal case number because it does not catalog records in that manner. A public agency is required to provide copies of public records by mail only after the requester “precisely describes the public records which are readily available within the public agency.” KRS 61.872(3)(b). When the requester does not provide sufficient information to enable the agency to locate the requested records through a reasonable effort, the description fails to comply with KRS 61.872(3)(b). *See, e.g.*, 16-ORD-242; 14-ORD-173; 13-ORD-077; 02-ORD-196. Therefore, KSP did not violate the Act when it advised the Appellant it could not locate the requested file using the information provided.²

As for the Appellant’s request for investigative files relating to a named confidential informant, KSP notes on appeal that it erroneously cited in its response KRS 197.025(2), a statute that applies to the Department of Corrections. However, KSP states it could not locate any responsive records based on the information provided. Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records exist. *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d

² After receiving this appeal, KSP conducted an additional search for Post 11 files pertaining to the Appellant and investigated by the named detective, but found no other records.

333, 341 (Ky. 2005). Here, the Appellant claims KSP should be able to locate records by using an “informant profile card,” which KSP is required to create under General Order OM-C-07. However, KSP states it did not locate any information for the named informant and presumes the card would have been destroyed pursuant to KSP’s records retention schedule.³ Thus, to the extent the Appellant may have established a *prima facie* case that responsive records should have existed at some point, KSP has rebutted the presumption by explaining why no records could be found. Accordingly, KSP did not violate the Act when it could not provide records relating to the named confidential informant.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

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/s/ James M. Herrick
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³ Under the applicable records retention schedule, informant cards need only be retained “two (2) years after information is no longer active.” See Kentucky State Police Records Retention Schedule, “Informant Card,” Series 00113, available at <https://kdla.ky.gov/records/RetentionSchedules/Documents/State%20Records%20Schedules/kystatepolice.PDF> (last accessed June 25, 2024). As the Appellant seeks information that is 26 years old and he admits the informant is now deceased, it is reasonable to conclude the informant card has been destroyed.