



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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24-ORD-254

November 26, 2024

In re: Vivian Miles/Kentucky State Police

**Summary:** The Kentucky State Police (“KSP”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), by delaying access to requested records beyond five business days from receipt of the request. KSP also violated the Act when it denied a request as too imprecise under KRS 61.872(3)(b).

### *Open Records Decision*

On October 4, 2024, Vivian Miles (“the Appellant”) requested “[e]mails and/or correspondence between” two KSP employees from June 22 to July 30, 2019, and “emails and/or correspondence from/to/cc” the same two employees “related/regarding: Item #2019 0085 or SAK # 2019 0085, Container A, Inventory, Database Sample, Data Bank, Rapid Testing.” In its initial response, KSP stated it needed “additional time to comply” with the request because, “[d]ue to the storage location of these records, they are not immediately available,” but after a search the records would “be released to” the Appellant “upon completion of the review.” KSP gave no date by which the records would be made available.

On October 25, 2024, KSP informed the Appellant it had located “approximately 958 records” that were “potentially responsive” to the request. However, KSP proceeded to deny the request on the grounds that it did not “precisely describe” the records as required by KRS 61.872(3)(b). This appeal followed.

Under KRS 61.880(4), a person may petition the Attorney General to review an agency’s action if the “person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including . . . delay past the five (5) day period described in” KRS 61.880(1). That statute requires a public agency to grant or deny a request for records within five business days of receiving it, unless the agency properly invokes KRS 61.872(5) to delay inspection of records that are “in active use, in storage or not otherwise available.” When a public agency delays inspection of records under KRS 61.872(5), it must also give “a detailed explanation of the cause”

for the delay and notify the requester of the “earliest date on which [records] will be available for inspection.”

Here, although KSP referred vaguely to “the storage location of these records,” it did not give a detailed explanation for why they were “not immediately available.” At all times, a public agency must substantiate the need for any delay and that it is acting in good faith. *See* KRS 61.880(2)(c) (placing the burden on the public agency to substantiate its actions); *see also* 21-ORD-211; 21-ORD-045. Because KSP did not provide a “detailed explanation of the cause” for delay, it did not meet its burden of establishing that the records were “in active use, storage or not otherwise available” or that delaying access to the records for an additional two weeks was necessary in this case. Furthermore, KSP did not give the earliest date when the records would be available. Thus, KSP subverted the intent of the Act, within the meaning of KRS 61.880(4), by delaying access to records past the five-day period described in KRS 61.880(1).

After this delay, having located 958 “potentially responsive” records, KSP denied the request, claiming the request was too imprecise in identifying the records. Under KRS 61.872(3)(b), “[t]he public agency shall mail copies of the public records to a person . . . after he or she precisely describes the public records which are readily available within the public agency.” A description is precise “if it describes the records in definite, specific, and unequivocal terms.” 98-ORD-17 (internal quotation marks omitted). This standard is not met when a request does not “describe records by type, origin, county, or any identifier other than relation to a subject.” 20-ORD-017 (quoting 13-ORD-077). In particular, requests for any and all records “related to a broad and ill-defined topic” generally fail to precisely describe the records. 22-ORD-182; *see, e.g.*, 21-ORD-034 (finding a request for any and all records relating to “change of duties,” “freedom of speech,” or “usage of signs” did not precisely describe the records).

Here, the Appellant did not seek “any-and-all records” related to a broad and ill-defined topic. Rather, she sought communications between two named KSP employees during a limited period of time in 2019. Moreover, the Appellant specified that she only sought communications of those employees related to a specific data sample. Thus, the request described the records in definite, specific, and unequivocal terms.<sup>1</sup>

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<sup>1</sup> *See generally Univ. of Ky. v. Kernel Press, Inc.*, 620 S.W.3d 43, 48 n.2 (Ky. 2021) (“ORA requests routinely seek ‘all documents pertaining to [subject matter].’ The responsibility for identifying responsive records and any applicable exception lies with the receiving public agency, not the requester.”).

To the extent KSP claims “correspondence” is an excessively vague descriptor, the Office has found otherwise. *See* 24-ORD-152. “[T]he common and ordinary meaning of ‘correspondence’ is ‘communication by letters or email,’ or ‘the letters or emails exchanged.’” 22-ORD-255. KSP can determine whether any letters responsive to the request exist by simply asking the two employees. Regarding emails, KSP has already found 958 “potentially responsive records.” Although KSP claims it can only determine whether an email specifically *mentions* the specific data sample at issue, but not whether it otherwise “relates” to it, it does not explain why this question could not also be posed to the two employees. “[I]t is only reasonable to assume that the employees in possession of responsive emails would be in the best position to search for them,” 23-ORD-304, and likewise, to identify them. Therefore, KSP violated the Act when it denied the Appellant’s request under KRS 61.872(3)(b).

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.

**Russell Coleman**  
**Attorney General**

/s/ James M. Herrick  
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