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24-ORD-262

December 9, 2024

In re: Christeena Gallahue/Oldham County School District

Summary: The Oldham County School District ("the District") violated the Open Records Act ("the Act") when it denied a portion of a request as too imprecise. The District did not violate the Act when it denied a portion of the request that did not seek "public records" as defined by KRS 61.870(2).

Open Records Decision

Christeena Gallahue ("Appellant") submitted a request to the District seeking "[a]ll files containing audio[,] sound[,] or data" that are "held at Converged Technology Professionals, Inc., BCM One or ATT" and related to voicemails from a specific phone number in January 2024. The Appellant also sought "all emails from, sent to, or copied to" five District employees from December 8, 2023, to October 16, 2024, that contain 17 keywords. In response, the District stated it does not possess records responsive to the request for voicemails and denied the request for emails under KRS 61.872(3)(b) because the Appellant did not precisely describe the records sought. This appeal followed.[1]

On appeal, the District explains that it does not possess responsive records because records "held at Converged Technology Professionals, Inc., BCM One or ATT" are not in its possession. Thus, the District has asserted that the requested records are not public records subject to the Act. The Act defines "public record" as "all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency."

[1] The Appellant also requested records related to previous records requests she had submitted and to the deletion of specific records. The District produced those records, and the Appellant has not challenged the District's responses on appeal.

KRS 61.870(2). The Appellant does not seek records owned, used, or in the possession of the District. Rather, she seeks records that are owned, used, or in the possession of two of the District's third-party vendors.

Further, there is no evidence in the record that the materials the Appellant seeks were prepared by or have been used by the District. Instead, the Appellant asserts that "the District is legally obligated to obtain copies of the requested records from its vendor." But the Office has previously held that an agency does not violate the Act by denying a request for records in the possession of its vendor. *See* 24-ORD-153 (finding records in the possession of the agency's consulting firm "do not fit the definition of 'public records'"). Further, the Appellant's belief that the District would have access to the requested records does not mean the District possesses or retains them within the meaning of the Act. *See, e.g.*, 15-ORD-190 (finding the Kentucky Department of Education did not possess or retain emails stored on local school district-owned servers even though the Department had an administrative password that permitted the Department to access the local district's emails). Thus, the District did not violate the Act when denied the Appellant's request for records held by Converged Technology Professionals, Inc., BCM One, or ATT that do not fit the definition of "public records."[2]

Regarding the Appellant's request for emails, the District argues the Appellant has not precisely described the records she seeks because of the large number of potentially responsive records. When a person requests copies of public records under the Act, "[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." KRS 61.872(3)(b). A description is precise "if it describes the records in definite, specific, and unequivocal terms." 98-ORD-17 (internal quotation marks omitted). This standard may not be 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). 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 also* 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); *but see Univ. of Ky. v. Kernel Press, Inc.*, 620 S.W.3d 43, 48 n.2 (Ky. 2021) (holding a request was proper when it sought "all records detailing [the] resignation" of a specific employee). A request that does not precisely describe the

[2] On appeal, the District asserts it has confirmed that neither it nor the identified vendors possess any voicemails or other records responsive to the Appellant's request.

records "places an unreasonable burden on the agency to produce often incalculable numbers of widely dispersed and ill-defined public records." 99-ORD-14.

The Office has previously found that a request for any emails sent or received by agency personnel containing certain keywords is not a vague request. *See, e.g.*, 23-ORD-006 (involving emails of 13 employees); 23-ORD-010 (same); 23-ORD-230 (involving emails of 30 employees). Here, the Appellant seeks emails sent to, sent from, or copied to five individuals. Moreover, the Appellant has limited her request to only emails containing 17 keywords that were sent in an eight-month period. As such, the request is sufficiently specific for the District to conduct the statutorily required search.

The District refers to the large number of potentially responsive records as evidence of the request's lack of precision. The number of emails that may be found in response to the District's search is relevant to determining how burdensome the request is. *See* KRS 61.872(6) ("If the application places an unreasonable burden in producing public records . . . the official custodian may refuse to permit inspection of the public records or mail copies thereof."). But here, the District did not deny the request as unduly burdensome. Instead, it denied the request as being too imprecise. Thus, the District violated the Act when it denied the Appellant's request for emails.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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/ Zachary M. Zimmerer
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Distributed to:

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