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24-ORD-269

December 12, 2024

In re: Danny Maiden/City of Carrollton

Summary: The City of Carrollton (“the City”) did not violate the Open Records Act (“the Act”) when it did not provide copies of records that do not exist or were not precisely described.

Open Records Decision

On November 5, 2024, Danny Maiden (“the Appellant”) requested “[a]ny and all documents or information pertaining to or related to the position of detective, investigator, [or] public affairs officer” for the Carrollton Police Department, “[i]ncluding [the number of] applicants and who was interviewed and by whom they were interviewed,” as well as “the organizational structure of the department from Chief down to the newest member.” In a timely response, the City provided a copy of a Facebook post advertising an opening for “two new police officers” and a job description for the position of Police Detective, which the City stated were “[t]he only responsive documents.” The City advised it had advertised positions through a third-party website known as “Indeed,” but those postings had expired and were not in its possession. The City further noted the Act does not require an agency to provide information, so it declined to answer the Appellant’s questions regarding “how many applications were received, date of interviews, etc.” This appeal followed.

The Appellant claims he “did not receive the organizational structure of the department or any documents” showing there was “a position for detective/investigator for the department.” In response, the City reiterates that expired job advertisements on Indeed are no longer accessible and that “there is no document listing those who were interviewed, nor is there an organizational chart.” The City also states Police Detective is the only position listed by the Appellant for which a job description exists. Once a public agency states affirmatively that no further records exist, the burden shifts to the requester to present a *prima facie* case that additional records do exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not established a *prima facie* case that any such records exist in the City’s custody or control.

However, in reply to the City's response, the Appellant claims the City should have provided copies of a specific individual's application and background check for the position of detective, as well as minutes from a city council meeting relating to the creation of the detective position. Under KRS 61.872(3)(b), it is incumbent on a person requesting copies of public records to "precisely describe[] the public records which are readily available within the public agency." At a minimum, the request must be "specific enough so that a public agency can identify and locate the records in question." 13-ORD-077. Records must be described in "definite, specific and unequivocal terms." 08-ORD-147. Here, the Appellant did not specifically request an individual employee's application or background check, or the meeting minutes of the city council. Accordingly, the City did not violate the Act when it did not provide records not precisely described in the Appellant's request. *See, e.g.,* 23-ORD-032.

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
James M. Herrick
Assistant Attorney General

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Distribution:

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