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25-ORD-033

February 4, 2025

In re: Daniel Woodie/Parks Hill Police Department

Summary: The Parks Hill Police Department ("the Department") violated the Open Records Act ("the Act") when it failed to respond to a request within five business days of receiving it. The Department also violated the Act when it withheld records without citing any exception authorizing its withholding and instead citing an order governing the Appellant's conduct. The Department also violated the Act when it denied the Appellant's request for lack of "proof" of residency after he stated he was employed in the Commonwealth. The Department did not violate the Act when it did not provide records it does not possess.

Open Records Decision

On September 26, 2024, Daniel Woodie ("Appellant") submitted a request to the Department seeking records documenting two years of "police activity" related to a specified address and two named individuals. In response, on December 6, 2024, the Department denied the request because one of the named individuals had an emergency protective order against the Appellant and because the Appellant is not an attorney or a party involved in an incident identified by the Appellant. The Department then invited the Appellant to resubmit his request through his attorney.

On December 19, 2024, the Appellant submitted a second request seeking "all public records" related to five specific "incidents," as well as "any other incidents or encounters" from 2021 to 2024 involving five named individuals. This request specified that one of the individuals should not be contacted by the Department because of an active interpersonal protective order ("IPO"). In response, the Department explained which records it possessed and would make available, which records were not available due the time that had passed since the identified "incidents," and which records would be made available after necessary redactions. Then, on January 2, 2025, the Department stated that it would not grant the

Appellant's request because the open IPO file against him says the Appellant "is not to have any contact with" one of the individuals identified in the request and the Department considers the Appellant's request "an attempt to circumvent [his] IPO." This appeal followed.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency "shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision." Here, the Appellant claims he submitted his first request to the Department on September 26, but did not receive a response until December 6. On appeal, the Department does not dispute the Appellant's assertions or claim it issued a timely response. Under the Act, the Department carries the burden of proof to sustain its actions. KRS 61.880(2)(c). Here, the Department did not explain why it did not respond to the Appellant's request. Thus, the Department violated the Act when it failed to respond to the Appellant's request within five business days of receiving it.

On Appeal, the Department asserts four grounds for its denial: (1) the Appellant "is not a Kentucky resident and has not provided proof that his place of employment is in Kentucky"; (2) the Appellant has an active IPO and has taken various actions to obtain information about the individual protected by the IPO; (3) the Department has "given [the Appellant] everything he requested" except for a copy of one body-cam video; and (4) it may withhold the body-cam video because the Appellant is not in the video and the video only involves an argument between two other individuals.

To start, the Department violated the Act when it denied the request because he had not provided proof that "his place of employment is in Kentucky." "All public records shall be open for inspection by any resident of the Commonwealth," and "[a]ny resident of the Commonwealth shall have the right to inspect public records." KRS 61.872. The Act defines "resident of the Commonwealth" to include a person employed in the Commonwealth. KRS 61.870(10)(d).

The official records custodian may require a person requesting to inspect records "to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f)." KRS 61.872(2)(a). Although the official records custodian may require "a statement" from the applicant, KRS 61.872(2)(a) does not go so far as to allow the official records custodian to demand "proof" of an applicant's residential status. *See, e.g.*, 22-ORD-

120 (providing a Post Office Box number and stating he was "employed" in Kentucky was sufficient for a requester to demonstrate he qualified as a resident of the Commonwealth).

KRS 61.872(2)(a) authorized the Department to ask the Appellant to provide "a statement" that demonstrates he qualifies as a resident of the Commonwealth. The Department, however, refused to accept the Appellant's statement that he "qualif[ies] as a resident of Kentucky" under KRS 61.870(10)(d). Although his statement does not "prove" the Appellant's residential status, KRS 61.872(2)(a) does not require actual proof of residency. Therefore, the Department violated the Act when it denied the Appellant's requests for a failure to provide additional proof of the Appellant's residency beyond his statement that he qualifies under KRS 61.870(10)(d).

Upon receiving a request to inspect public records, a public agency must determine within five business days whether to grant the request or deny it. KRS 61.880(1). If the agency chooses to deny the request, it "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." *Id*. An agency response denying a request for records must explain the denial by "provid[ing] particular and detailed information," not merely a "limited and perfunctory response." *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). "The agency's explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it." *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013).

Here, the Department has not cited an exemption that allows it to deny the Appellant's request for records. Instead, it cites an IPO. The Department has provided the Office with a copy of that IPO, which orders the Appellant to "have no contact or communication with Petitioner" and not "commit further acts of violence or abuse." The Department also describes alleged conduct of the Appellant that it believes violates the IPO. Even if the Appellant's requests constituted a violation of the IPO, which the Office does not decide to be the case, such a violation does not authorize the Department to withhold records without citing a statutory exemption authorizing its denial. Rather, the IPO governs the Appellant's conduct toward a third party, not the Department's response to the Appellant's request for records. Here, the Department has not cited a specific exception that authorizes withholding records. Thus, the Department violated the Act.

On appeal, the Department states that is has given the Appellant all records it possesses, except for one video. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a prima facie case that the requested record does exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a prima facie case that the records do or should exist, then the public agency "may also be called upon to prove that its search was adequate." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (*citing Bowling*, 172 S.W.3d at 341).

The Appellant asserts that the Department should possess additional records. But a requester's bare assertion that an agency must possess the requested records is insufficient to establish a *prima facie* case that the agency actually possesses such records. *See, e.g.*, 22-ORD-040. Rather, to present a prima facie case that the agency possesses or should possess the requested records, the requester must provide some statute, regulation, or factual support for that contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. The Appellant has not presented a *prima facie* case that additional records exist. Accordingly, the Department did not violate the Act when it could not provide the requested records.

Last, as an explanation for withholding the body-cam video, the Department states only that the Appellant "has no affiliation with" it, he "is not in the video[,] and he's not referenced in the video." However, because the Department has not cited a statutory exception that authorizes it to withhold this record, it has violated the Act. *See Edmondson*, 926 S.W.2d at 858.

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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