



COMMONWEALTH OF KENTUCKY
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21-ORD-039

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In re: Lawrence Trageser/Personnel Cabinet

Summary: The Personnel Cabinet (“Cabinet”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist in its possession.

Open Records Decision

On January 24, 2021, Lawrence Trageser (“Appellant”) asked the Cabinet to provide records relating to a former Kentucky State Police (“KSP”) Commissioner. Specifically, the Appellant requested the former commissioner’s personnel file and records related to a sexual harassment complaint that had been filed against him and the subsequent investigation. The Cabinet provided the former commissioner’s personnel file but stated that it did not possess any records relating to the complaint or investigation.¹ This appeal followed.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist. *Bowling v. Lexington-Fayette Urban Cty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant argues that the Cabinet should have “complaints, reprimands, disciplinary actions, [and] internal investigations” relating to the former commissioner because those documents are mentioned in 02-ORD-231. In fact, however, 02-ORD-231 states

¹ Pursuant to KRS 61.872(4), the Cabinet directed the Appellant to the Justice Cabinet and KSP as possible custodians of those records.

that “formal charges were never leveled against” the former commissioner because he resigned while the grievance in question was pending.² Therefore, the Appellant has not made a *prima facie* case that KSP issued any reprimand or took disciplinary action against the former commissioner.

The Appellant has not presented a *prima facie* case that complaints, investigations, reprimands, or disciplinary actions for the former commissioner exist or should exist in the Cabinet’s possession. Thus, the Cabinet did not violate the Act when it denied the Appellant’s request.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. 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.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

² Under KRS 18A.020(2)(a), the Cabinet must maintain an official personnel file for each state employee. The Cabinet’s records retention schedule states that the personnel file should contain “disciplinary actions” along with “the complete record and supporting documentation for each personnel action,” as well as written reprimands. *See* Personnel Cabinet, Records Retention Schedule, “Master Personnel Folder,” Series 04522, *available at* <https://kdla.ky.gov/records/recretentionschedules/Documents/State%20Records%20Schedules/kypersonnelcabinet.PDF> (last accessed Feb. 25, 2021). However, because the former commissioner was not subjected to a disciplinary action or a written reprimand, there is no documentation relating to any such action. Furthermore, the records retention schedule provides that the personnel file “should not include . . . grievances (unless the grievance supports an employment action.” (*Id.*) Because the former commissioner resigned, KSP took no employment action against him. Therefore, according to the applicable records retention schedule and the Cabinet’s statements, the grievance Appellant seeks does not exist in the Cabinet’s records.

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Distributed to:

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