



COMMONWEALTH OF KENTUCKY
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22-ORD-101

May 19, 2022

In re: Chad Heath/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it issued a timely response to a request to inspect records and when it stated affirmatively that it could not provide copies of records that do not exist within its possession.

Open Records Decision

On Sunday, April 17, 2022, Chad Heath (“Appellant”) submitted a request by email to KSP for a copy of the “Anti-Bribery Registration Statement” that the Appellant believes a specific KSP trooper should have filed pursuant to the Foreign Corrupt Practices Act (“FCPA”). On April 22, 2022, having received no response, the Appellant initiated this appeal.

On appeal, KSP states it received the Appellants request on Monday, April 18, 2022. 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, KSP received the request on Monday, April 18 and it responded five business days later on Monday, April 25. Therefore, KSP did not violate the Act when it issued its response to a request within five business days.

KSP stated affirmatively that it does not possess any records responsive to the Appellants request. 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 in the agency's possession. See *Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005).

Here, the Appellant did not attempt to make a *prima facie* case that KSP should possess any "Anti-Bribery Registration Statements" filed pursuant to the FCPA. Nor could he. This Office has previously explained to the Appellant that the FCPA prohibits individuals from making payments to a foreign official for the purpose of influencing (*i.e.*, bribing) that foreign official to take official action. See, *e.g.*, 22-ORD-092 (explaining to the Appellant the application of 15 U.S.C. §§ 78dd-1, *et seq.*). The FCPA also prohibits foreign firms from bribing United States officials on United States Territory. *Id.*

The Appellant has not presented any evidence that KSP has acted on behalf of, or is bribing, foreign officials. As such, there is no reason that KSP would possess any "Anti-Bribery Registration Statement" filed pursuant to the FCPA. Accordingly, KSP did not violate the Act when it could not provide copies of records that do not exist within its possession.

A party aggrieved by this decision may appeal it by initiating 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.

Daniel Cameron
Attorney General

s/Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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