



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

23-ORD-055

March 13, 2023

In re: Micheal Whitehead/Louisville Metro Police Department

Summary: The Louisville Metro Police Department (“the Department”) violated the Open Records Act (“the Act”) when it did not respond to a request to inspect records. The Department did not violate the Act when it denied a request seeking information rather than public records.

Open Records Decision

On January 14, 2023, Micheal Whitehead (“Appellant”), submitted a request to the Department to inspect a variety of records related to traffic accidents.¹ Having received no response to this request by February 6, 2023, the Appellant initiated this appeal.

Upon receiving a request to inspect public records, 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.” KRS 61.880(1). Here, the Appellant claims to have submitted a request on January 14, but never received a

¹ Specifically, he requested, from January 1, 2015 to the date of the request: (1) “[t]he number of all fatal traffic collisions . . . categorized as . . . leaving the scene of an accident/hit and run”; (2) “[t]he number of traffic incidents investigated” by the Department’s Traffic Unit or the name of the agency that asked the Department to investigate; (3) the locations where requests (1) and (2) took place; (4) “[t]he number of all fatal leaving the scene of an accident/hit and run cases that resulted in an arrest”; (5) “[t]he number of fatal leaving the scene of an accident/hit and run cases that resulted in an arrest or charge”; (6) [t]he number of fatal leaving the scene of an accident/hit and run cases that are currently open, pending, and or have no named suspect charged or arrested”; (7) “[t]he number of all leaving the scene of an accident/hit and run cases that were not fatalities but resulted in any measurable injury”; and (8) “[t]he number of all leaving the scene of an accident/hit and run cases that resulted in a charge or arrest.”

response. On appeal, the Department admits it failed to 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.

However, on appeal, the Department states it is denying the request because the Appellant seeks "information and data analysis" instead of public records. This Office agrees. The Appellant's request sought "the number" of certain categories of traffic accidents, the status and amount of investigations into those traffic accidents, and the locations of those traffic accidents. These requests do not describe public records to be inspected, but rather, they seek information. *See, e.g.*, 21-ORD-014 (an agency properly denied a request seeking "the total number" of unemployment claims filed because the request sought information and did not describe public records to be inspected). The Act does not require public agencies to fulfill requests for information, but only requests for records. KRS 61.872; *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) ("The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of its records."). Accordingly, the Department did not violate the Act when it denied the Appellant's request as one seeking information rather than public records.²

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 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.

Daniel Cameron
Attorney General

s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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² Nevertheless, the Department has provided the Appellant with data from its "criminal investigation" database and its "arrest" database that he may analyze to discover the information he requested.

Distributed to:

Micheal Allen Whitehead

Alice Lyon

DeAndrea Baltimore

Natalie S. Johnson