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23-ORD-066

March 27, 2023

In re: David McAnally/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it denied a request for copies that did not precisely describe the records requested.

Open Records Decision

On February 7, 2023, David McAnally (“Appellant”) requested electronic copies of “all Cease and Desist orders issued by the Cabinet” or any of its organizational units since March 30, 2016, “directed at merit and non-merit employees.” The Appellant explained that his term “Cease and Desist orders” included all “official actions directing . . . employees to stop engaging in a particular activity (examples, work place communication, alleged discrimination (EEO, ADA, etc.), sexual discrimination including superordinates [*sic*] affairs with subordinates, etc.)” as well as “official actions . . . alleging wrongdoing [by] employees and threatening legal action if the offending activity is not stopped.”

In a timely response, the Cabinet stated it could not fulfill the Appellant’s request “without more definite parameters” because “[t]he Cabinet generates a significant amount of correspondence annually, and it does not maintain a readily accessible database to pull all ‘cease and desist orders.’” The Cabinet further asserted that “[i]t would require an inordinate amount of time to search every single case file in the Cabinet for ‘any and all’ cease and desist orders over the past (nearly) seven years.” This appeal followed.

When a person requests copies of public records under the Act, “[t]he public agency shall mail copies of the public records to a person . . . after he or she precisely describes the public records which are readily available within the public agency.” KRS 61.872(3)(b). A description is precise “if it describes the records in definite,

specific, and unequivocal terms.” 98-ORD-17 (internal quotation marks omitted). This standard may not be met when a request does not “describe records by type, origin, county, or any identifier other than relation to a subject.” 20-ORD-017 (quoting 13-ORD-077). In particular, requests for any and all records “related to a broad and ill-defined topic” generally fail to precisely describe the records. 22-ORD-182; *see also* 21-ORD-034 (finding a request for any and all records relating to “change of duties,” “freedom of speech,” or “usage of signs” did not precisely describe the records); *but see Univ. of Ky. v. Kernel Press, Inc.*, 620 S.W.3d 43, 48 n.2 (Ky. 2021) (holding a request was proper when it sought “all records detailing [the] resignation” of a named employee).

Here, the Appellant has asked for “cease and desist orders” issued to employees of the Cabinet. However, he does not cite any authority indicating that such “cease and desist orders” exist.¹ Rather, as described by the Appellant, “cease and desist orders” would encompass all communications of any kind in which an employee was told not to do something. This is not an identifiable class or type of records, but a broad and ill-defined subject matter “so nonspecific as to preclude the custodian from determining what, if any, existing records it might encompass.” 96-ORD-101.

Because a “cease and desist order” is not a generally recognized category of record created by the Cabinet, it asserts it also cannot find the records electronically according to the Appellant’s criteria. The Act’s requirement that a request for copies of records contain a precise description of the records sought, KRS 61.872(3)(b), applies regardless of whether copies are sought in paper or electronic form because “the difficulties associated with identifying and locating all responsive documents . . . are the same when, as in this case, the records are not searchable based on the criteria provided.” 16-ORD-242. On appeal, the Cabinet states it “would have to search every single case file in [its] possession from March 30, 2016, to present” in order to fulfill the Appellant’s request.² Thus, the Appellant’s request did not “precisely describe[] public records which are readily available within the public agency,” as required under KRS 61.872(3)(b). Accordingly, the Cabinet did not violate the Act when it denied the request.

¹ For example, while the Kentucky Personnel Board has acknowledged that “written reprimands” may be an appropriate sanction for employee misconduct, it does not describe a type of record similar to a “cease and desist order” as a type of disciplinary record that can be placed in an employee’s personnel file. *See, e.g.*, 101 KAR 1:335; 101 KAR 1:345.

² As such, this request is different from those at issue in 22-ORD-255 and 23-ORD-006, in which the requester narrowed the scope of the request to specifically named employees. In 22-ORD-255, the requester sought all “emails or correspondence” between two people related to a specific topic. In 23-ORD-006, the request sought all “correspondence” exchanged among 13 named individuals related to a few topics. But here, the Appellant has not narrowed the scope of his request to specifically identified individuals, and the Cabinet is, according to its website, “one of the largest agencies in state government with nearly 8,000 full- and part-time employees.” *See* <https://www.chfs.ky.gov/Pages/about.aspx> (last accessed March 27, 2023).

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/ James M. Herrick
James M. Herrick
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Distributed to:

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