



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-128

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In re: Westley Moyer/Edmonson County Attorney's Office

Summary: The Edmonson County Attorney's Office (the "County Attorney") violated the Open Records Act ("the Act") when it failed to cite an exception authorizing it to deny a request to inspect records or explain how it applied.

Open Records Decision

Westley Moyer ("Appellant") submitted a request to the County Attorney to inspect "[a]ny and all complaints or calls received regarding" the Appellant or his truck. The Appellant limited his request to records created on two specific dates. In a timely response, the County Attorney denied the request, stating only that "[t]his is an ongoing investigation." This appeal followed.

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.* Under KRS 61.880(2)(c), the agency carries the burden of proof in sustaining its action.

Here, the County Attorney denied the Appellant's request because "[t]his is an ongoing investigation," but he did not cite any exception authorizing the denial or explain how any exception applied to the records withheld. Moreover, the County Attorney did not respond to this Office's notice of appeal, or provide any supplemental

information to support his original denial.¹ Thus, the County Attorney violated the Act when he failed to explain the basis for his denial of the Appellant's request to inspect records.

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.

Daniel Cameron
Attorney General

s/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Westley Moyer
Adam G. Turner

¹ It is unclear if the "ongoing investigation" the County Attorney references is an ongoing criminal investigation, or administrative investigation. If the records were "compiled and maintained" by the County Attorney as part of a criminal investigation or criminal litigation, then they would be categorically exempt under KRS 61.878(1)(h). However, the burden of proof lies with the County Attorney to sustain his action. KRS 61.880(2)(c).