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**23-ORD-137**

June 19, 2023

In re: Gwen Morris/Mount Washington Police Department

**Summary:** The Mount Washington Police Department (“the Department”) violated the Act when it denied a request for records without citing a specific exemption to justify its denial of the request.

***Open Records Decision***

Gwen Morris (“Appellant”) submitted a request to the Department for four categories of records.<sup>1</sup> The Department denied the request because it “require[s] a person to identify themselves with a valid state issued ID when requesting an incident report and the incident report must reference them by name.”<sup>2</sup> This appeal followed.

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<sup>1</sup> The Appellant, a paralegal for a law firm, sought: (1) “All police reports and other non-exempt records relating to the detention of” her firm’s client by Department officers “in the vicinity of the Norton Immediate Care Center” in Mount Washington on May 26, 2022; (2) “All police reports and other non-exempt records relating to” any activity by Department officers “in the vicinity of the Norton Immediate Care Center” in Mount Washington from the same day; (3) “the entire roster of all law enforcement officers employed by” the Department on the same day; and (4) “Any 911 calls, dispatch notes or other non-exempt records relating to” the detained individual or the Norton Immediate Care Center in Mount Washington from the same day.

<sup>2</sup> The Department also stated it charges “\$5.00 per incident report and \$2.00 for each photo accompanying the report.” This Office has consistently found that any copying fee above 10 cents per page is excessive unless the agency can substantiate that its actual cost to reproduce the records is greater than that amount, or that the agency has specific statutory authority to charge a higher copying fee. *See, e.g.*, 21-ORD-243; 19-ORD-062; 08-ORD-021; 01-ORD-136; 94-ORD-77. The Office is unaware of any statutory authority under which the Department could charge a blanket fee of \$5.00 for an incident report, or \$2.00 for a photograph. Incident reports are not, for example, automobile collision reports, for which the Kentucky State Police (“KSP”) may charge a fee of \$5.00 for paper copies or \$10.00 if obtained electronically. *See, e.g.*, 189.635(7); 502 KAR 15:010 § 4; 16-ORD-024. However, because the Department claims not to have responsive incident reports, it has not imposed an excessive fee here.

The Appellant claims the Department violated the Act when it required her to present a state issued ID.<sup>3</sup> She is correct. Under KRS 61.872(2)(a), an agency may only require a requester to sign a written application describing the records to be inspected, and the manner by which the requester qualifies as a resident of the Commonwealth under KRS 61.870(10). Moreover, under KRS 61.880(1), if an agency denies in whole or in part the inspection of any record its response must 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.”

Here, rather than cite to a specific exception, the Department states its policy prohibits those who are not referenced by name in the incident report from inspecting it, and it requires the requester to present a valid state issued ID to ensure he or she is qualified to inspect the records. But the Act does not require a requestor to provide any form of identification when requesting incident reports.<sup>4</sup> Therefore, the Department violated the Act when it denied a request for records without citing any applicable exemption or otherwise explaining the denial.

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

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<sup>3</sup> She also claims the Department failed to respond at all to her request for a roster of the Department’s employees on May 26, 2022. However, the Department claims to have provided a copy of that roster on appeal. The Office has previously found that an agency cannot simply ignore portions of a request to inspect records. *See, e.g.*, 23-ORD-023; 21-ORD-090. Regardless, because the requested record has now been provided, the Office considers this part of the appeal to be moot. *See* 40 KAR 1:030 § 6.

<sup>4</sup> To the extent the Department considers automobile collision reports to be “incident reports,” the Department is not authorized to provide copies of such records. KSP is the official custodian of automobile collision reports, and KRS 189.635 provides a specific procedure to be followed before inspection of such records may occur. *See* 23-ORD-087. If a local law enforcement agency receives a request for an automobile collision report, it should instead provide the requester with the contact information for the official custodian of records for KSP. *See* KRS 61.872(4) (“If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records”); *see also* 23-ORD-087.

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Distributed to:

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