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**23-ORD-168**

July 11, 2023

In re: Christopher Wiest/Kentucky Department of Education

**Summary:** The Kentucky Department of Education (“the Department”) violated the Open Records Act (“the Act”) when it denied a request for emails or other communications related to certain social media posts over a five-day period.

***Open Records Decision***

Christopher Wiest (“Appellant”) submitted to the Department a request for “[a]ny emails, communications, or other public records, related to the Twitter or Facebook posts by the [Department], between June 1, 2023 [and the date of the request],<sup>1</sup> related to the LGBTQI+ community, including any emails, communication, or other documents, related to the restriction of the @KyDeptoED twitter account to (i) permit comments only by those followed or mentioned by [the Department]; and (ii) to delete or hide comments.”<sup>2</sup> The Department denied the request because it lacked “specificity” and did not allow the Department “to identify and locate records responsive to” the Appellant’s request. This appeal followed.

The Department maintains that the Appellant submitted “a vague, blanket request [that] did not contain enough specificity to allow the [Department] to identify and locate specific and responsive public records.” Under the Act, a request must be “adequate for a reasonable person to ascertain [its] nature and scope.”

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<sup>1</sup> Because the Appellant did not include an end date for the scope of his request, the Department concluded that the Appellant sought records between June 1, 2023, and the date of the request, June 5, 2023.

<sup>2</sup> The Appellant also sought (1) “Any and all policies or procedures that govern the handling of official social media accounts (Facebook or Twitter) by or of he [Department], in force from January 1, 2023, to the [date of the request], including policies for blocking or deleting comments or users” and “any documents that reflect who in any ways controls or operates the official social media accounts.” The Department provided records responsive to these requests.

*Commonwealth v. Chestnut*, 255 S.W.3d 655, 661 (Ky. 2008). Under KRS 61.872(3)(b), “[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.” 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*, e.g., 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 specific employee).

Here, the Department argues it cannot ascertain the nature and scope of the Appellant’s request because the language “or other public records” is ambiguous because it could include any possible public record in the Department’s possession. It further claims the Appellant’s failure to identify specific employees or “program areas” where the records may be located makes the request too vague to understand. But in context, “other public records” clearly relates to other public records that are similar in type to emails and communications. When read in its entirety, the Appellant specified the types of record he sought, *i.e.*, emails, communications, or other similar types of public records. He narrowed those types of records to only those related to social media posts on two websites over a five-day period, and he narrowed still further the types of social media posts over that period to a specific topic. He included in his description records meeting all the aforementioned criteria that also relate to the Department allegedly blocking commentary on those same posts. Given all these limitations on the scope of the Appellant’s request, the Office cannot conclude that it related to a broad, ill-defined topic that would lead to an incalculable number of potentially responsive records. *See, e.g.*, 23-ORD-024, 23-ORD-006; 22-ORD-182. Accordingly, the Department violated the Act when it denied this portion of the Appellant’s request.

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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Distributed to:

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