



COMMONWEALTH OF KENTUCKY
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23-ORD-171

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In re: Sarah Teague/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) violated the Open Records Act (“the Act”) when it failed to issue a response to a request to inspect records within five business days of receipt. The Office cannot resolve factual disputes about whether all records responsive to a request have been provided.

Open Records Decision

On April 5, 2023, Sarah Teague (“Appellant”) submitted a request to KSP for various VHS recordings and photographs from 1995 related to the investigation into her daughter’s kidnapping. On April 18, 2023, KSP responded and provided a copy of a responsive VHS tape it had converted into a digital file and placed on a USB drive. KSP advised it was the same recording previously provided in response to an earlier request the Appellant had submitted in 2022. KSP did not address the Appellant’s request for photographs.

Correspondence between the Appellant and KSP ensued over the following weeks. Primarily, the Appellant objected to KSP providing the video in digital form, as opposed to copying it onto another VHS cassette tape. She also alleged KSP had not provided all responsive records. This appeal followed.¹

¹ The Appellant previously attempted to appeal KSP’s disposition of her request, but she failed to provide a copy of her April 5, 2023, request, resulting in her first appeal being dismissed for failure to comply with KRS 61.880(2)(a). In response to that previous appeal, KSP argued not only that the Appellant had failed to comply with KRS 61.880(2)(a), but also, that it had provided all records responsive to the request.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). A public agency may also delay access to responsive records if such records are “in active use, storage, or not otherwise available.” KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must also notify the requester of the earliest date on which the records will be available, and provide a detailed explanation for the cause of the delay. Here, the KSP admits it received the Appellant’s request on April 5, but did not issue its response until April 18, 2023. Accordingly, KSP violated the Act when it failed to issue a timely response.

On appeal, KSP claims to have provided all responsive records to the Appellant and asserts that the appeal should be considered moot under 40 KAR 1:030 § 6. The Appellant acknowledges KSP has provided additional records that it had not provided in response to previous requests. The Appellant claims additional records must exist, given KSP’s failure to adequately search for records in response to her previous requests.² However, KSP’s disposition of the Appellant’s previous requests are not before the Office. Therefore, the Office cannot determine whether KSP conducted an adequate search previously. Here, KSP has fully explained the methods of its search, including its review of recordings logged into evidence that were stored apart from its investigative files.³ This Office has previously stated it cannot resolve factual disputes, such as competing claims about whether all responsive records have been provided. *See, e.g.*, 22-ORD-261; 22-ORD-010; 19-ORD-083 (stating the Office cannot “resolve the factual dispute between the parties regarding the disparity between records which have been provided and those sought but not provided”). Accordingly, the Office cannot find that KSP has failed to provide all responsive records.

² It is not clear if the Appellant still objects to KSP converting the VHS recordings to a digital file. KSP says it no longer has the ability to copy VHS recordings and it can only convert VHS recordings to digital file formats. Although KRS 61.874(2)(b) defines the “standard format” for paper records and electronic records, it does not define the standard format of video recordings. Rather, KRS 61.874(1) states, “If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that such duplication will not damage or alter the original records.” Here, KSP has duplicated a non-written record in a manner that will not destroy the original. Therefore, the Office cannot find that KSP violated the Act by duplicating the requested VHS recording in this way.

³ Specifically, KSP states that, once it began recording and saving video and audio records using CDs, the CDs were capable of being stored with the relevant investigative file. Because of the size of VHS cassette tapes, KSP did not store those tapes with their accompanying investigative files.

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/ Marc Manley
Marc Manley
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Distributed to:

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