



COMMONWEALTH OF KENTUCKY
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23-ORD-275

October 19, 2023

In re: Rebecca Barnett/Powell County Sheriff's Office

Summary: The Powell County Sheriff's Office ("the Sheriff's Office") violated the Act when it did not respond to a request to inspect records within five business days of receiving it. The Sheriff's Office also violated the Act when its untimely response failed to cite an applicable exception to the Act and explain how it applied to records withheld.

Open Records Decision

On September 13, 2023, Rebecca Barnett ("Appellant") emailed a request to the Sheriff's Office seeking copies of various records related to a criminal case.¹ After receiving no response from the Sheriff's Office by September 21, 2023, the Appellant initiated this appeal.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency "shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision." Although it carries the burden of proof in sustaining its action, the Sheriff's Office does not explain on appeal why it failed to respond to the Appellant's request. See KRS 61.880(2)(c). As such, the Sheriff's Office violated the Act when it failed to respond to the Appellant's request within five business days.

¹ Specifically, she sought the 911 call logs from September 26-28, 2019; the entire case file related to an identified individual; and the Sheriff's Office's policies and procedures related to investigating a report of a missing person.

After this appeal was initiated, the Sheriff's Office issued a response to the Appellant's request. Specifically, the Sheriff's Office directed the Appellant to submit her request for 911 calls to the Powell County 911 Dispatch. *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."). The Sheriff's Office also stated it did not possess any specific policies or procedures for investigating reports of missing persons, and in doing so, discharged its duty under the Act. *See, e.g.,* 23-ORD-086 (if requested records do not exist, a public agency must affirmatively say so, and the burden then shifts to the requester to establish a *prima facie* case responsive records do or should exist (citing *Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005))).

However, in response to the Appellant's request for the case file related to an identified person, the Sheriff's Office stated only that it was "an ongoing investigation and there is an exception that information cannot be released until the case is closed." If an agency denies a request to inspect records, it must cite the exception authorizing its denial and explain how the exception applies to the records withheld. KRS 61.880(1). A "limited and perfunctory" response violates the Act. *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). Because the Sheriff's Office failed to cite an applicable exception, or state how it applied to withhold the requested case file, its "limited and perfunctory" response violated the Act.² *Id.*

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.

² The Office's finding that the Sheriff's Office response was deficient should not be considered an opinion that the records are indeed subject to inspection. They may be exempt under KRS 61.878(1)(h) or KRS 17.150(2), which is incorporated into the Act by KRS 61.878(1)(l). But the Office refrains from deciding that issue, which is not properly presented in this appeal.

**Daniel Cameron
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s/ Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Rebecca Barnett
Danny Rogers