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23-ORD-281

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In re: Bradley Morris/Mayfield Police Department

Summary: The Office cannot find that the Mayfield Police Department ("the Department") violated the Open Records Act ("the Act") because the Office cannot resolve the factual dispute between the parties.

Open Records Decision

Inmate Bradley Morris ("Appellant") claims that, on September 9, 2023, he submitted a request to the Department for copies of "medical records" regarding an identified person, which the Department "received from Vanderbilt Hospital pertaining to" his criminal case. On September 26, 2023, the Appellant initiated this appeal, claiming he did not receive a response from the Department.[1]

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.

[1] The Appellant initiated his appeal using a typed, prepopulated form multiple inmates have begun using to allege agencies violated the Act. It is unclear where this prepopulated form originated. The Office has previously warned inmates not to rely on this prepopulated form because it may not clearly state the basis for the inmate's appeal. *See, e.g.*, 23-ORD-122 n.1. Inmates should instead clearly articulate the basis for their appeals. For example, here, the form's prepopulated allegations state the Department violated the Act for: (1) "[p]erson's access to record [*sic*] relating to him. KRS 61.884"; (2) "[r]ight to inspect, but make deletions. KRS 61.874"; and (3) "non-existing records." The Appellant also wrote on the form "respond in five days." He also wrote that he "received statements from" the Graves County Commonwealth's Attorney "informing [him] that the Mayfield Police Department is factually in possession of said records." The Appellant does not further describe the violations he alleges. The Office construes the Appellant's allegations to mean he did not receive a response from the Department because he did not provide a response from the Department. If he *did* receive a response from the Department, then he failed to properly invoke the Office's jurisdiction by failing to provide a copy of the Department's response. *See* KRS 61.880(2)(a) (requiring "the complaining party [to] forward to the Attorney General a copy of the written request and a copy of the written response denying inspection").

KRS 61.880(1). Here, the Appellant claims he submitted a records request to the Department on September 9, 2023, and that it did not respond to that request. In contrast, on appeal, the Department states it received the Appellant's request on September 14, 2023, and issued a timely response within five business days, on September 18, 2023. As proof, the Department provides a copy of that response.[2] The Office has previously found that it is unable to resolve factual disputes between a requester and a public agency, such as whether a requester received an agency's response to his request. *See, e.g.,* 23-ORD-220. Accordingly, the Office cannot find the Department violated the Act because the Office cannot resolve the factual dispute between the parties as to whether the Appellant received the Department's response to his request.

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.

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[2] In the Department's response, it denied the Appellant's request under KRS 61.878(1)(a) because the requested records "contain sensitive details like date(s) of birth, social security number(s), specific and sensitive medical information regarding the victim, and details regarding the nature and extent of the victim's injuries which implicate the victim's privacy interests which outweigh a public right of inspection of these records under the [Act]." KRS 61.878(1)(a) exempts from inspection "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Under this subsection, "[o]nce a protectable privacy interest is established, proper application of the Open Records Act requires a 'comparative weighing of the antagonistic interests'—the privacy interest versus the policy of openness for the public good." *Cape Publ'ns v. City of Louisville*, 147 S.W.3d 731, 734 (Ky. App. 2003) (quoting *Ky. Bd. of Exam'rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992). To overcome a significant privacy interest, such as a crime victim's interest in protecting her personal medical records from their alleged assailant, a requestor must present a superior countervailing public interest in disclosure. "At its most basic level, the purpose of disclosure focuses on the citizens' right to be informed as to what their government is doing." *Zink v. Commonwealth, Dep't of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 829 (Ky. App. 1994). A requester's "personal interest in obtaining the [medical records] does not equate to a preponderant interest on the part of the general public." 16-ORD-035. "It is the public's interest, and not [the requester's] personal interest, which must be advanced by release of the disputed records." 94-ORD-45. The Office has previously found that a public employee's medical records are exempt from public disclosure under KRS 61.878(1)(a) where no public interest in disclosure was shown to outweigh employee's privacy interest. *See, e.g.,* 18-ORD-178. Similarly, here, a crime victim's medical records would also be exempt from public disclosure under KRS 61.878(1)(a), absent any countervailing public interest.

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