



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

24-ORD-024

January 29, 2024

In re: Kentucky Innocence Project/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it denied a request to provide information, or when it did not provide a record it does not possess.

Open Records Decision

On December 21, 2023, the Kentucky Innocence Project (“Appellant”) requested “information” it described as “[t]he total amount of money authorized and/or spent under the [Kentucky Victim and Witness Protection Program (“the Program”)] per year, from 2000 through 2023, paid from or by” KSP. Although the Appellant requested information, it stated it would “accept electronic copies of these records.” In a timely response, KSP stated it had “conducted a diligent search but was unable to locate any responsive records.”¹ This appeal followed.

The Act does not require public agencies to fulfill requests for information, but only requests for records. KRS 61.872; *Dep’t of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of [their] records.”). Here, the Appellant’s request was somewhat ambiguous, inasmuch as it expressly sought “information,” but in the form of “electronic copies [of] records.” Thus, it may be liberally construed as a request for records in KSP’s possession that contain the requested information.

However, KSP asserts it possesses no record containing the total amount of money it expended under the Program for the years requested. Once a public agency states affirmatively that it does not possess a responsive record, the burden shifts to the requester to present a *prima facie* case that the requested record does exist. *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here,

¹ KSP suggested the Appellant submit a request to the Office of Attorney General, which administers the Program under KRS 15.247(1).

the Appellant claims to possess copies of two records showing specific payments made by KSP in 2006 and 2007. However, the Appellant has not shown that any record exists containing the “total amount” expended by KSP under the Program between 2000 and 2023. Furthermore, KSP asserts it no longer possesses the two documents identified by the Appellant because they have been destroyed in accordance with KSP’s records retention schedule. Moreover, KSP states it “does not maintain the financial software in which those documents were created and stored.” Nor has the Appellant cited any statute, regulation, or policy requiring KSP to maintain any record containing the requested information.² Accordingly, the Appellant has not made a *prima facie* case that KSP possesses a record reflecting “the total amount” of its expenditures under the Program. Therefore, the Office cannot find that KSP violated the Act.

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.

Russell Coleman
Attorney General

/s/ James M. Herrick
James M. Herrick
Assistant Attorney General

#13

Distribution:

Miranda J. Hellman, Esq.
Samantha A. Bevins, Esq.
Ms. Stephanie Dawson
Ms. Abbey Hub

² In light of the fact that the Office of the Attorney General is charged with administering the Program under KRS 15.247(1) and 40 KAR 6:010, KSP’s suggestion that the Appellant request such records from the Office of the Attorney General was reasonable.