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24-ORD-080

March 20, 2024

In re: *Mt. Sterling Advocate*/Mount Sterling Police Department

Summary: The Mount Sterling Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it did not require the use of a standardized request form and when it could not provide a record that does not yet exist. Requests by news-gathering organizations for automobile collision reports must be submitted to the Kentucky State Police (“KSP”) pursuant to 502 KAR 15:010.

Open Records Decision

On February 23, 2024, the *Mt. Sterling Advocate* (“Appellant”), a newspaper, submitted a request by email to the Department for a copy of a vehicle accident report for a collision that had occurred approximately 18 hours earlier. In its initial response, the Department stated the Appellant would have to go to the Department in person and fill out a request form. After the Appellant pointed out that KRS 61.872(2)(b) allows requests to be submitted by email, the Department replied that it would still be necessary to use the standardized form promulgated by the Attorney General pursuant to KRS 61.876(4). When the Appellant noted that KRS 61.872(2)(c) provides “[a] public agency shall not require the use of any particular form for the submission of an open records request,” the Department agreed to accept the request without a standardized form, so long as the Appellant provided the information required by KRS 61.876(4). The Department further stated that, “[o]nce the records are deemed to be appropriate for release, (no open investigation, no HIPAA information, or sensitive information),” the Appellant could obtain a copy of the report.¹ This appeal followed.

On appeal, the Appellant claims the Department “is insisting” that the request be submitted on the standardized form. However, that is not the case because the

¹ This entire discussion occurred within one business day after the Appellant’s request was submitted, and accordingly did not delay the Department’s final response beyond the five business days allowed under KRS 61.880(1).

Department clearly agreed to accept the request without the form. A public agency does not violate the Act when it denies a request due to the requester's failure to provide the information required by KRS 61.876(4).² *See* 24-ORD-021. Here, however, the Department did not deny the request due to a lack of information from the Appellant. Instead, in its final response to the request,³ the Department informed the Appellant the accident report "is not completed at this time." Thus, the Department asserts the record does not yet exist.

Further, the Department is not authorized to provide its copy of the automobile collision report to the Appellant. Rather, the Department's copy of the report shall remain confidential unless requested by one of the parties identified under KRS 189.635(5)(c). *See* KRS 189.635(5)(b) ("All other accident reports required by this section, and the information contained in the reports, shall be confidential and exempt from public disclosure under [the Act], except when . . . [d]isclosed as provided in this section"). News-gathering organizations are not listed among the parties to whom such reports "shall be made available" in KRS 189.635(5)(c). Rather, news-gathering organizations are only entitled to copies of automobile accident reports by following the procedure set forth in 502 KAR 15:010. *See* KRS 189.635(8)(d) ("A request under [KRS 189.635(8)] shall be completed using a form promulgated by [KSP] through administrative regulations in accordance with KRS Chapter 13A" (emphasis added)); *see also* 23-ORD-087 (finding that KSP is the official custodian of records for automobile accident reports). The form required under 502 KAR 15:010 and the required fee are required to be submitted to KSP. *See* 502 KAR 15:010 § 5 (a news-gathering organization requesting a traffic collision report under KRS 189.635(8) "shall complete and sign KSP 029, News-gathering organization certification and submit the form with the request for records" by email, fax, or mail to the KSP records custodian). Thus, even if the report had existed at the time of the Appellant's request, the Department should have denied the request and directed the Appellant to follow the procedure set forth in 502 KAR 15:010 and to address its request to KSP.⁴

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

² Here, the only such information omitted in the Appellant's request was "[w]hether the request is for a commercial purpose." KRS 61.876(4)(c).

³ Because the Appellant did not provide a dated copy of the Department's emailed response, but merely quoted the language of it, the Office cannot determine whether the Department's final disposition of the request was timely under KRS 61.880(1).

⁴ Because the Department is not authorized to complete the Appellant's request, and because it did not actually impose the fee about which the Appellant complains, it is unnecessary to determine whether the Department subverted the intent of the Act by imposing an excessive fee.

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

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Distributed to:

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