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24-ORD-107

April 26, 2024

In re: Glenn Odom/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it withheld from inspection under KRS 17.150(2) intelligence and investigative reports regarding a criminal case in which the prosecution has not concluded.

Open Records Decision

Inmate Glenn Odom (“Appellant”) submitted a request to KSP for “a copy of all tangible documents, statements, search warrants, photos, blood-alcohol test warrants, DNA test results, etc.” related to a specific criminal case. In response, KSP denied the request and cited KRS 17.150(2), which is incorporated into the act by KRS 61.878(1)(l). This appeal followed.¹

On appeal, KSP maintains that the records requested by the Appellant are exempt from inspection under KRS 17.150(2). That statute exempts from inspection “intelligence and investigative reports” until criminal prosecution is completed or a determination not to prosecute is made. *See id.* If a law enforcement agency denied access to a record under KRS 17.150(2), it must “justify the refusal of inspection with specificity.” KRS 17.150(3).

Here, KSP explains it denied the Appellant’s request because the prosecution related to the identified case has not concluded. Indeed, KSP provides proof that the criminal case is scheduled for a jury trial beginning on October 7, 2024. The Appellant

¹ KSP did provide the Appellant with a copy of the initial Kentucky Incident Based Reporting System Report concerning the investigation, with personal information redacted pursuant to KRS 61.878(1)(a). The Appellant has not challenged KSP’s redactions. Rather, he asserts only that KSP should have produced additional records.

acknowledges the prosecution has not yet concluded and claims he seeks these records through the Act as an alternative to receiving them from the Commonwealth's Attorney.² Because KSP has specified that the prosecution related to the criminal investigation identified by the Appellant has not concluded, it has met its burden of proof that the withheld records are exempt under KRS 17.150(2). *See* KRS 17.150(3). Thus, KSP did not violate the Act when it denied inspection of the requested records in this case.³

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.

Russell Coleman
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/s/ Zachary M. Zimmerer
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² The Appellant indicates that KSP's refusal to grant his request "would deny [him] due process of law," but the Appellant's right to evidence in his criminal case is controlled by the Kentucky Rules of Criminal Procedure, not the Act. *See* RCr 7.24(2); *see also* 22-ORD-059 (noting criminal defendants are entitled to records pertaining to their case through the discovery rules applicable to criminal cases, but not through the Act). A person who could obtain responsive records by using discovery rules in a criminal or civil action cannot require a public agency to waive the Act's exemptions because he or she chose to submit a request under the Act instead.

³ Because KRS 17.150(2) is dispositive of the issues on appeal, it is not necessary to address KSP's argument that the records are exempt under KRS 61.878(1)(h).