



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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24-ORD-112

May 1, 2024

In re: Stephen Bratcher/Department of Juvenile Justice

**Summary:** The Department of Juvenile Justice (“the Department”) did not violate the Open Records Act (“the Act”) when it conducted an adequate search for records, provided records that were responsive, and denied the request to the extent it sought additional records because it lacked adequate specificity.

### *Open Records Decision*

On February 13, 2024, Stephen Bratcher (“the Appellant”) emailed a request to the Department for the “complete personnel files and related records” for eight former or current employees, including “disciplinary records, training records, internal affair records, complaints . . . or commendations, previous law enforcement/corrections related employers, [and] records relating to the report, investigation, or findings of” three types of “incidents.” Specifically, those “incidents” included: an incident involving the discharge of a firearm, Taser, or OC spray at a person; “an incident in which the use of force against a person resulted in the treatment of any known or possible injury”; and an “incident in which a sustained finding was made by any law enforcement agency, oversight agency, investigative personnel . . . or supervisor” reflecting dishonesty in the course of an investigation or prosecution of a crime, including “perjury, false statements, filing false reports, or destruction, falsifying, or concealing of evidence.” The Appellant also sought “records involving any disciplinary action including but not limited to termination, resignation . . . or demotion” and “any communication regarding these actions whether in hard copy or electronic form.”

In a timely response on February 20, 2024, the Department stated the request implicated more than 5,500 pages of records, and it still needed to compile additional records from “different branches within the agency.” The Department therefore invoked KRS 61.872(5), claimed the records were “not otherwise available,” and stated the records would be available on or before April 1, 2024, after it has completed its search and performed all necessary redactions. Additionally, the Department

advised that, to the extent the Appellant sought “any communication” in “hard copy or electronic form” regarding “any disciplinary actions” of multiple employees without any limitation in temporal scope, his request failed to “precisely describe” the records sought, as required under KRS 61.872(3)(b).

While the Department searched for records in advance of its April 1 deadline, the Appellant submitted two new requests, on February 21 and March 11, in an effort to narrow the scope of his request for “any communications” related to disciplinary actions. Ultimately, the Department issued its final response to the Appellant’s original February 13 request on April 1, 2024. The Appellant then initiated this appeal, stating he wanted to “formally appeal the response and decision [he] received on April 1, 2024.” Specifically, he challenges the Department’s claim that he failed to precisely describe the additional communications he sought.

Before turning to the merits of the appeal, the Office notes that the Appellant has provided the documents necessary to invoke the Attorney General’s review of only one of the Department’s denials. The Appellant has provided to the Office copies of his February 13 request that the Department styled as “ORR 24-13”; the Department’s initial response to it, dated February 20, in which the Department sought additional time to produce the records; and the Department’s final disposition of the request on April 1, 2024.<sup>1</sup> Under KRS 61.880(2)(a), a person seeking the Attorney General’s review of a denial of a request to inspect records must provide a copy of his original request and the agency’s denial. Here, although the Appellant has provided copies of the requests he submitted on February 21 and March 11, he did not provide copies of the Department’s responses to those requests, which the Department issued on March 8 and March 18, respectfully. Instead, the Appellant provided the Office with encrypted emails he received from the Department, which were inaccessible. After the Department responded to this appeal and noted the Appellant did not provide copies of its March 8 and March 18 responses, the Appellant offered to supplement his appeal by providing copies of those responses.<sup>2</sup> However, the Appellant initiated this appeal by stating he sought to “formally appeal the response and decision [he] received on April 1, 2024.” He did not indicate he intended

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<sup>1</sup> The Appellant also allegedly submitted a second request on February 13 seeking similar information with respect to four other employees, but the Appellant did not provide the Office with a copy of that request. The Department identified the requests as “ORR 24-13” and “ORR 24-14” and issued a timely, consolidated response on February 20, 2024. However, because the Appellant did not provide a copy of his request identified as ORR 24-14, any dispute regarding that request is not properly before the Office.

<sup>2</sup> On April 29, 2024, shortly before the Office’s deadline under KRS 61.880(2)(a) to issue a decision in this matter, the Appellant attempted to supplement his appeal by providing a copy of the Department’s March 8 response. The Appellant’s late supplementation, however, does not afford the Office sufficient time to consider the merits of any dispute regarding the Appellant’s February 21 request and the Department’s March 8 response to it. Should the Appellant seek the Office’s review of any dispute involving that request and the Department’s response, he may submit a new appeal by providing all necessary documents in the first instance.

to appeal the Department's March 11 and March 18 responses, and the Office will not consider any dispute regarding the Appellant's subsequent requests or the Department's response to those subsequent requests in this appeal. If the Appellant seeks the Office's review of the Department's responses to his subsequent requests, he may initiate a new appeal by providing the documents required under KRS 61.880(2)(a).

Turning to the merits of the issue that is currently before it, the Office concludes the Department did not violate the Act. Under KRS 61.872(3)(b), "[t]he public agency shall mail copies of the public records to a person . . . after he or she precisely describes the public records which are readily available within the public agency." A description is precise "if it describes the records in definite, specific, and unequivocal terms." 98-ORD-17 (internal quotation marks omitted). This standard may not be met when a request does not "describe records by type, origin, county, or any identifier other than relation to a subject." 20-ORD-017 (quoting 13-ORD-077). In particular, requests for any and all records "related to a broad and ill-defined topic" generally fail to precisely describe the records. 22-ORD-182; *see, e.g.*, 21-ORD-034 (finding a request for any and all records relating to "change of duties," "freedom of speech," or "usage of signs" did not precisely describe the records).

Here, the thrust of the Appellant's request sought the personnel files of multiple employees and any disciplinary actions taken against them as it relates to three different types of incidents, *i.e.*, the use of force, the use of force using specific types of equipment, and allegations of dishonesty. The Department provided the Appellant with all records responsive to that aspect of his request. Further, the Department noted that any communications related to disciplinary actions taken against the employees were contained in their personnel files. To the extent the Appellant sought other communications about disciplinary actions taken against the employees that were not contained in their personnel files, he failed to limit his original request by temporal scope. The Department discharged its duty by searching in the location where responsive communications would likely exist—the personnel files of the employees—and providing all responsive records. If the Appellant discovers something in the records he has received that document a specific type of disciplinary action against a specific employee at a certain time, he could submit a new request to the Department for communications related to that incident. But unlike a request for emails containing specific keywords, which can easily be searched, *see, e.g.*, 24-ORD-048, a request for "any records involving any disciplinary action" regarding multiple employees, without any limitation in temporal scope, is an "any-and-all records" type of request related to a "broad and ill-defined topic." *See, e.g.*, 21-ORD-034. Accordingly, the Department did not violate the Act by producing records it located and inviting the Appellant to narrow the scope of his request.

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/ Marc Manley  
Marc Manley  
Assistant Attorney General

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Distributed to:

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