



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-113

May 3, 2024

In re: Makayla Triplett/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 61.878(1)(a) and KRS 17.150(4) intelligence and investigative reports regarding a criminal case in which prosecution has not concluded. KSP did not violate the Act when it denied a portion of the request that sought information without describing public records to be inspected. KSP also did not violate the Act when it did not provide records that do not exist.

Open Records Decision

On January 2, 2024, Makayla Triplett (“Appellant”) submitted a request to KSP for “a copy of the case file for [a specific individual].” In a timely response, KSP provided responsive, nonexempt records but redacted portions of the records under KRS 61.878(1)(a) and stated it could not locate additional responsive records. On February 21, 2024, the Appellant requested “more specific records from the case file,” which she described using specific page numbers. She also sought the handwritten statement from a specific witness and asked KSP to identify two sets of numbers from a record KSP had previously provided.¹ In a timely response, KSP provided “all releasable records regarding” the case file and the handwritten witness statement. However, KSP withheld certain criminal history information under KRS 17.150(4), which is incorporated into the Act by KRS 61.878(1)(l). KSP also withheld polygraph examination records under KRS 61.878(1)(j), and further stated the Act does not require it to “answer questions or provide information.” This appeal followed.²

¹ In her February 21 request, the Appellant also sought records related to three “key people involved.” On appeal, the Appellant states that she is not appealing this portion of the request.

² To provide context to her appeal, the Appellant attached several other requests submitted by her and her aunt and KSP’s responses to those requests. Those requests are not at issue in this appeal. First, the Appellant has clarified that she is “solely asking for an appeal regarding [the specific

On appeal, KSP asserts that it properly redacted “social security numbers, addresses, and telephone numbers” from the records it produced under KRS 61.878(1)(a). KSP also asserts that it properly withheld an audio recording of an anonymous tip under KRS 61.878(1)(a). However, KSP now claims the polygraph examination records are exempt under KRS 61.878(1)(a) instead of KRS 61.878(1)(j). KRS 61.878(1)(a) exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” This exception requires a “comparative weighing of the competitive interests” between personal privacy and the public interest in disclosure. *Ky. Bd. of Exam’rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992). However, when the public agency fails to articulate a privacy interest, “the balance is decisively in favor of disclosure.” 10-ORD-082; *see also* 20-ORD-033; 19-ORD-227. The burden of proof rests with the public agency to sustain its denial of a request to inspect public records. KRS 61.880(2)(c).

KSP is correct that “social security numbers, addresses, and telephone numbers” should be redacted under KRS 61.878(1)(a). *See Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013) (holding phone numbers, addresses, driver’s license numbers may be routinely redacted under KRS 61.878(1)(a)). Thus, KSP did not violate the Act when it redacted that information from the records.

Regarding the audio recording of an anonymous tip, KSP alleges that release of this recording “would have a chilling effect on those who might otherwise seek assistance of law enforcement” because the tipster’s identity could be identified by his or her voice. Although the Office has declined to establish a blanket rule holding all 911 recordings are exempt under KRS 61.878(1)(a), *see, e.g.*, 24-ORD-086, the exemption may apply to certain types of 911 calls. *See Bowling v. Brandenburg*, 37 S.W.3d 785, 788 (Ky. App. 2000) (911 calls reporting a domestic violence incident). The Supreme Court of Kentucky has also held that a person’s explicit request to remain anonymous in their dealings with a public agency may tilt the privacy scales in his or her favor. *See Cape Publ’ns, Inc. v. Univ. of Louisville Foundation, Inc.*, 260

individual’s] case file.” Second, the Appellant’s aunt does not appear to be a resident of the Commonwealth and has not appealed KSP’s denial of her request because she did not qualify as a “resident of the Commonwealth” under KRS 61.870(10). The Office has previously held that “because a nonresident has no statutory right to inspection, a public agency cannot violate the Act by denying a nonresident’s request.” 24-ORD-034 n.1. Accordingly, because the Appellant’s aunt does not appear to be resident, and the Appellant has specified she only seeks review of the denials of her January 2 and February 21 requests, the Office will limit its analysis to those two requests.

S.W.3d 818, 823–24 (Ky. 2008) (the names of anonymous donors to the University of Louisville Foundation were exempt because the donors were assured anonymity). Finally, other exemptions to the Act support the public policy that anonymous law enforcement sources should be permitted to retain their anonymity. *Cf.* KRS 61.878(1)(h) (exempting law enforcement records that would “reveal[] the identity of informants not otherwise known”); KRS 17.150(2)(a) (exempting law enforcement “intelligence and investigative reports” that would reveal “[t]he name or identity of any confidential informant or information which may lead to the identity of any confidential informant”). For all these reasons, KSP did not violate the Act when it withheld an audio recording of an anonymous tip.

Regarding the Appellant’s request for portions of the case file that include polygraph tests and reports, the Office has previously held that “[p]olygraph tests and polygraph examiner’s reports may also be withheld from public inspection under KRS 61.878(1)(a).” *See* 15-ORD-093; 04-ORD-245 (“The public interest in the questions and answers on a polygraph test is not outweighed by the potential invasion of a person’s privacy by the release of such material.”); *see also* OAG 90-144; OAG 86-39; OAG 86-22; OAG 83-260. Thus, KSP did not violate the Act when it withheld portions of the case file which included polygraph tests and reports.

KSP also maintains that it properly withheld portions of the case file that contained “information and records obtained from the [National Crime Information Center] database” under KRS 17.150(4). KRS 17.150(4) provides that “[c]entralized criminal history records are not subject to public inspection.” KRS 17.150(4) is incorporated into the Act by KRS 61.878(1)(l), which exempts from inspection public records the disclosure of which is prohibited by enactment of the General Assembly. The Office has previously upheld the “denial of access to centralized criminal history records maintained by KSP in the NCIC database . . . in a series of open records decisions dating back to 1976.” 19-ORD-197; 06-ORD-128. Here, KSP asserts that the withheld portions of the case file contain “information and records obtained from the NCIC database.” Accordingly, KSP did not violate the Act when it withheld a portion of case file under KRS 17.150(4).

Regarding the Appellant’s request that KSP identify two sets of numbers from a record it had previously provided the Appellant, KSP maintains that the Act does not require it to provide information. KSP is correct. The Appellant identified two sets of numbers and asked, “What are they?” and whether they represented a case number. These requests do not describe public records to be inspected, but rather, seek information. *See, e.g.*, 21-ORD-014 (holding an agency properly denied a request

seeking “the total number” of unemployment claims filed). The Act does not require public agencies to fulfill requests for information or answer interrogatories. It only permits public inspection of describable public 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 its records.”).

Finally, KSP maintains that it “has provided all existing, responsive, and nonexempt records pertaining” to the specific individual’s case file. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does or should exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the records do or should exist, then the public agency “may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). Here, the Appellant has not made a *prima facie* case that KSP possesses additional nonexempt materials in the specific individual’s case file. Accordingly, KSP did not violate the Act when it did not provide them.

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
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

#185

Distributed to:

Makayla Triplett
Samantha A. Bevins
Stephanie Dawson
Abbey Hub
Mitchel S. Hazelett