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25-ORD-109

April 30, 2025

In re: Saeid Shafizadeh/Shelbyville Police Department

Summary: The Shelbyville Police Department (“the Department”) violated the Open Records Act (“the Act”) when it failed to substantiate the fees imposed in its original response, but it has substantiated the imposed fees on appeal. The Department did not violate the Act when it withheld “background investigation file[s]” and “polygraph examinations” under KRS 15.400(3).

Open Records Decision

Saeid Shafizadeh (“Appellant”) submitted three requests to the Department seeking a variety of records related to three individuals.¹ In response, the Department identified the subparts of the request for which it would be providing responsive records, and the subparts for which it did not possess responsive records. The Department also stated it would be withholding the “background investigation file” and “polygraph examinations” under KRS 15.400. In citing that exemption, the Department provided the Appellant with the entire text of KRS 15.400. Finally, the Department stated it would mail the responsive records to the Appellant upon receipt of the copying and postage fees.² In response, the Appellant initiated three appeals challenging the responses to each request.³

¹ Specifically, the Appellant sought: (1) “Employment and background investigation files and records”; (2) “Files and records containing incident reports, disciplinary, complaints, initiating investigation letter(s), suspension notification(s), letters of separation, termination, retirement, and resignation”; (3) “Internal affairs investigation(s)”; (4) “Performance appraisal and/or reviews”; (5) “Trainings received and/or” reviews or certificates; (6) “Leave abuse documentation”; (7) “Polygraph examination(s)”; (8) “File or published photo”; and (9) “Complete records of any settlements.”

² In response to each request, the Department broke down the fees to be paid by stating the cost of making copies and the cost of postage. The Department further stated the Appellant could opt out of the postage fees by picking up the responsive records himself.

³ Because the only difference between the requests was the individual whose records the Appellant sought, and because the Department’s responses were identical except for the fees imposed on the Appellant, the Office has consolidated these three appeals. *See, e.g.*, 22-ORD-167.

The Appellant presents two issues on appeal. First, he objects to the Department's offer to provide him with paper copies rather than electronic copies of the responsive records without stating the total number of pages of responsive records. Second, the Appellant asserts the Department has not adequately invoked any exemption to withhold records.

Under KRS 61.880(4), a person requesting records may appeal to the Attorney General if he believes "the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees." The Act provides that a "public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required." KRS 61.874(3).

Under KRS 61.880(2)(c), the burden is on the public agency to sustain its action. To meet its burden here, the Department must substantiate the costs it actually incurred to make copies of the requested records. The Department, in its original response, did break down the required fees by separately stating the copying and postage costs. But the Department acknowledges that it did not state how many pages of records it was providing in response to each of the Appellant's requests, meaning the Appellant did not know what the cost was to obtain the records. On appeal, the Department states that the copying costs were ten cents per page, which is a reasonable fee under the Act. *See Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985). Thus, although the Department failed to substantiate the fees it imposes in its original response, it has substantiated the imposed fees on appeal.⁴

Regarding its withholding of the "background investigation file" and "polygraph examinations," the Appellant argues the Department failed to explain how the cited exception applied to the requested record, and that it improperly issued a "blanket denial." An agency citing an exemption under KRS 61.878(1) must give "a brief explanation of how the exception applies to the record withheld." KRS 61.880(1). The agency's explanation must "provide particular and detailed information," not merely a "limited and perfunctory response." *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky.

⁴ Further, on appeal, the Department acknowledges that it should have informed the Appellant that it was making paper records available to the Appellant because it does not possess electronic copies of records. *See* KRS 61.874(2)(a) ("Agencies are not required to convert hard copy format records to electronic formats.").

1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013); *see also City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848–49 (Ky. 2013) (noting the agency’s “proof may and often will include an outline, catalogue, or index of responsive records and an affidavit by a qualified person describing the contents of withheld records and explaining why they were withheld”).

In most cases, it is not self-evident from the text of most exemptions how they apply to records a public agency withholds from inspection. For example, records may be exempt if they implicate a personal privacy interest that is outweighed by the public interest in the record. KRS 61.878(1)(a). A public agency invoking this exemption must explain what the personal privacy interest at stake is, so that it can be weighed against the public interest in access to the record. *See, e.g.*, 22-ORD-040. Other exemptions involve multiple types of records, such as “drafts, notes, or correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.” KRS 61.878(1)(i). Thus, when a public agency relies on an exemption that can apply to various types of records, the public agency must describe what record it is withholding, *i.e.*, whether the record is a “draft,” a “note,” or “correspondence with a private individual.” Still other exemptions require a public agency to provide specific information to justify their use. For example, KRS 61.878(1)(h) can be invoked by a law enforcement agency investigating violations of criminal statutes, but only if the law enforcement agency explains how “the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action.”

Here, KRS 15.400⁵ states, in relevant part, “The [Act] notwithstanding, the [Peace Officer’s] background investigation, . . . and polygraph examination shall not be subject to disclosure.” KRS 15.400(3). Thus, this exemption is unique because it *categorically* exempts a peace officer’s “background investigation” and “polygraph examination.” Here, Appellant requested three individuals’ “background investigation file” and “polygraph examinations.” The Department’s denial quoted KRS 15.400(3), which makes those records categorically exempt under the Act. Therefore, the Department’s explanation for the denial of the request was adequate. Accordingly, the Department did not violate the Act.

⁵ KRS 15.400 is incorporated into the Act by KRS 61.878(1)(l).

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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Distributed to:

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