



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-111

April 30, 2025

In re: Jeffrey Gegler/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it did not provide records it does not possess. KSP violated the Act when it denied a portion of a request as too imprecise.

Open Records Decision

Jeffrey Gegler (“Appellant”) submitted a seven-part request to KSP seeking: (1) “A list of all KSP staff and contracted attorneys dealing with open records requests”; (2) a “Complete work history including but not limited to, curriculum vitae, application for employment, color photo image of ID badge, complaints (internal and external), misconduct findings, pay, and training” related to named KSP staff and attorneys¹; (3) “Curricula for training dealing with” *Shively Police Department v. Courier Journal, Inc.*, 701 S.W.3d 430 (Ky. 2024); (4) “Memoranda or other instructions to staff regarding” the *Shively* decision; (5) “KSP policy and procedure documents for dealing with open records requests”; (6) “All internal KSP emails originating from or being sent to the listed attorneys regarding” the *Shively* decision; and (7) “All incoming and outgoing emails by the attorneys with” several variations of the Appellant’s name “in the subject or body of the email.”

In response, first, KSP granted part 5 of the request, providing responsive records. Second, regarding parts 1, 3, and 4, KSP stated it did not possess any responsive records. Third, regarding parts 2, 6, and 7, KSP denied each part under

¹ The Appellant’s request did not identify specific individuals or a category of individuals whose “work history” he sought. However, KSP assumes, in its response, that this request relates to the “KSP staff and contracted attorneys” previously identified. The Office accepts KSP’s interpretation of this part of the request.

KRS 61.872(3)(b) because they did not precisely describe the records sought. This appeal followed.

On appeal, KSP maintains that it does not possess any records responsive to parts 1, 3, and 4 of the request. 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 is able to make 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 any requested records that were not provided. Instead, he asserts that his request for a “list of all KSP staff and contracted attorneys dealing with open records requests” could be fulfilled by production of the phone directory of KSP’s “legal department.” But the Appellant did not request a phone directory of KSP’s legal department. Rather, he requested a list of certain individuals who undertake a specific category of work. Thus, although the Appellant maintains that “[i]t is indisputable that the KSP HR Department has a list of individuals working in the KSP legal department” (internal quotations omitted), that is not the record he requested. Moreover, a requester’s bare assertion that an agency possesses a requested record is insufficient to establish a *prima facie* case that the agency, in fact, possesses it. See, e.g., 22-ORD-040. Rather, to present a *prima facie* case that the agency possesses or should possess the requested record, the requester must point to some statute, regulation, or factual support for this contention. See, e.g., 21-ORD-177; 11-ORD-074. As the Appellant has provided only a bare assertion, he has not presented a *prima facie* case that KSP possesses any of the records he seeks. Accordingly, KSP did not violate the Act when it did not provide records that it does not possess.

Next, KSP maintains that parts 2, 6, and 7 of the request did not precisely describe the records to be inspected. When a person requests copies of public records under the Act, “[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.” KRS 61.872(3)(b). A description is precise “if it describes the records in definite, specific, and unequivocal terms.” 98-ORD-17 (internal quotations 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). 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 also* 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); *but see Univ. of Ky. v. Kernel Press, Inc.*, 620 S.W.3d 43, 48 n.2 (Ky. 2021) (holding a request was proper when it sought “all records detailing [the] resignation” of a specific employee). A request that does not precisely describe the records “places an unreasonable burden on the agency to produce often incalculable numbers of widely dispersed and ill-defined public records.” 99-ORD-14.

KSP argues that the Appellant’s requests do not precisely describe the records sought because they each presume the existence of the “list of all KSP staff and contracted attorneys dealing with open records requests” referred to in part 1 of the request. KSP explains that “nearly every staff attorney currently employed by KSP and nearly every staff attorney previously employed by KSP in recent history deals with open records requests in some aspect.” Therefore, according to KSP, it “cannot determine the identity of the individual[s] whose records Appellant is requesting.”

A request to inspect public records must describe those records in a manner “adequate for a reasonable person to ascertain the nature and scope of [the] request.” *Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008). Here, in order to determine whether the Appellant’s request was adequately specific, the Office asked KSP to state the number of staff attorneys who “deal[] with open records requests in some aspect.” In response, KSP stated that it “currently has five (5) staff attorneys” who “are regularly involved with some aspect of processing open records requests.”

When considering a request that does not specifically identify the individuals whose records have been sought, the Office has considered the number of individuals implicated by the request relevant when determining whether a requester has described records “in definite, specific, and unequivocal terms.” In 23-ORD-230 and 24-ORD-048, the Office rejected the argument that a request for emails containing certain key words sent or received by the agency’s “employees” did not precisely describe the records where the requests implicated roughly 30 and 50 employees, respectively. On the other hand, the Office has found requesters failed to precisely describe the records sought when the request would require the agency to search the files of thousands of employees. *See, e.g.* 24-ORD-180 n.3; 23-ORD-066 n.2.²

² Further, the requests at issue in 24-ORD-180 and 23-ORD-066 would have required the respective agencies to manually search the files of all its employees.

Here, the Appellant described a discrete category of KSP employee: those who “deal[] with open records requests.” KSP has explained that this category encompasses only five employees. Although KSP is correct that the Appellant did not “identify the name of any individual whose records he sought,” the Act does not require the Appellant to do so. Because he seeks copies of records by electronic mail, the Act requires him to precisely describe the records sought, not their potential location. The agency is responsible for ascertaining the location of responsive records or the personnel who may possess them. *Kernel Press*, 620 S.W.3d at 48 n.2 (“ORA requests routinely seek ‘all documents pertaining to [subject matter].’ The responsibility for identifying responsive records and any applicable exception lies with the receiving public agency, not the requester.”).

Here, KSP presents no basis for the Office to depart from its analysis in 23-ORD-230 and 24-ORD-048, which determined that requests implicating a larger number of unnamed employees than are at issue here still precisely described the records sought. As such, the Appellant’s request was sufficiently specific for KSP to conduct the statutorily required search.

In sum, the Appellant has not presented a *prima facie* case that KSP possesses any of the records identified in parts 1, 3, and 4 of his request. However, because KSP has stated that parts 2, 6, and 7 implicated only five individuals, it violated the Act when it denied those portions of the request as too imprecise.

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
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Distributed to:

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