

FILED
MAY 16 2008
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 08-21-EC3

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MAY 16 2008
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF KENTUCKY STATE POLICE

APPELLANT

v. **COMPLAINT ON APPEAL**

COURIER-JOURNAL

Serve: CT Corporation System
Kentucky Home Life Building
Louisville, KY 40202

APPELLEE

In Re: Appeal from 08-ORD-080, open records opinion of the Attorney General rendered on April 17, 2008, In Re: The Courier-Journal/Kentucky State Police.

Comes the Appellant by counsel and respectfully appeals the Kentucky Office of Attorney General's April 17, 2008 decision finding that the Kentucky State Police (KSP) violated KRS Chapter 61, the Open Records Act. As grounds for this appeal the Appellant states as follows:

PARTIES

1. The Appellant, Department of Kentucky State Police, is a public agency as defined in KRS 61.870(1). The Appellant's principal place of business is Frankfort, KY.
2. The Courier-Journal is a Kentucky corporation registered with the Kentucky Secretary of State's Office at 525 W. Broadway, Louisville, KY 40202 with a registered agent as CT Corporation System, Kentucky Home Life Building, Louisville, KY 40202.

JURISDICTION AND VENUE

3. This action is brought pursuant to KRS 61.880 and KRS 61.882 as an appeal of the Attorney General's decision in 07-ORD-061, rendered April 17, 2008.¹

4. This court has jurisdiction of this action pursuant to KRS 61.882.

5. Venue lies in this Circuit pursuant to KRS 61.882.

FACTS

6. On April 27, 2008 the Kentucky Office of the Attorney General found that the KSP violated the Kentucky Open Records Act by failing to provide the Courier-Journal with a copy of the Sex Offender Registry database in Windows XP-Based excel format. The Attorney General based stated that the Kentucky Open Records Act does not provide an exemption for records that are provided online, that the records were previously provided to the Courier-Journal and the requested records were available in the requested format.

7. The records previously provided to the Courier-Journal were generated and extracted from the Sex Offender Registry. They were not in existence at the time that the Courier-Journal requested them but were provided pursuant to KRS 61.874(3) one time in an effort to assist the Courier-Journal with a story. KSP determined that it was not possible to continue extracting data from the registry to provide these records to the public.

8. KSP's argument that some of the Sex Offender Registry records are maintained in a Windows XP-based Excel format is incorrect and based upon a misunderstanding of how the Sex Offender Registry is maintained. No portion of the Sex

¹ See attached Exhibit 1: 08-ORD-080, dated April 17, 2008, In re: The Courier-Journal/Kentucky State Police.

Offender Registry database is maintained in a Windows XP-based Excel format and no updated records pertaining to the Sex Offender Registry are kept in the Windows XP-based Excel format or any electronic format that can be distributed to the public. To provide this information, the Kentucky State Police must conduct an electronic search of its database to extract the data, post the data in a Windows XP-based Excel format and generate a new record for production. The Kentucky Open Records Act does not require an agency to generate records of this type for public production.


9. KRS 61.882 entitles the Appellant to a *de novo* determination by this Court. All underlying correspondence to the Attorney General's Office on this appeal is attached for the Court's reference.²

PRAYER FOR RELIEF

10. The Appellant respectfully prays that relief be granted against the Appellees as follows:

- a. That 08-ORD-080 be reversed, vacated and determined void; and
- b. Any and all other relief to which the Appellant may be entitled.

Respectfully submitted,


MORGAIN M. SPRAGUE
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Office of Legal Services
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Frankfort, KY 40601
502-695-6318

² See Exhibit 2: Attorney General Notification to Agency of Receipt of Open Records Appeal No. 20080012, March 21, 2008; Kentucky State Police Response to Open Record Appeal No. 20080012, March 27, 2008.

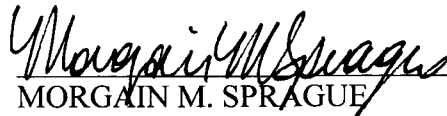
CERTIFICATE OF SERVICE

This is to certify that a true copy of the original Complaint on Appeal was served by mail, first class, postage prepaid, this 16th day of May, 2008 to the following individuals:

Hon. Jack Conway, Attorney General
Office of the Attorney General
The Capitol, Suite 118
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Frankfort, KY 40601-3449

Hon. Amye Bensenhayver
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