

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000714-MR

GEORGE WILLIAM SYKES

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM GRAHAM, JUDGE
ACTION NO. 99-CI-01066

JAMES KEMPER

APPELLEE

OPINION
REVERSING AND REMANDING
** ** * * * * *

BEFORE: BARBER, COMBS, AND McANULTY, JUDGES.

BARBER, JUDGE: Appellant George William Sykes ("Sykes") filed an open records request pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884. Sykes asked for records of arrests between the dates of May 11, 1992 through July 23, 1992, and for January 17, 1993 through May 5, 1993. This request was served on the Franklin County Correctional Complex ("FCCC"), and Appellee James Kemper, Jailor ("Kemper").

The Kentucky Open Records Act requires that a response to such a request be made within three days of the receipt thereof. See KRS 61.880(1). Sykes received no response to his request. Twenty five days after the request was filed, Sykes

wrote to the Attorney General asking for a review as provided for by KRS 61.880(2)(a). FCCC/Kemper notified the Attorney General that Sykes' request "was never filed as an Open Records request and what he appears to be requesting are court records."

Following review of the agency's response, the Attorney General issued a decision faulting its lack of responsible action. The Attorney General's decision states: "For the reasons that follow, we conclude that the Franklin County Correctional Complex's failure to respond to Mr. Sykes request constituted a violation of the Open Records Act." The Attorney General stated that failing to respond to the request in any way is a violation of KRS 61.880(1), and is considered by the Attorney General to be "particularly egregious". The Attorney General noted that an individual requesting a copy of public records is not required to use any specific form to request the records, so long as the request is legible and the name of the requesting party is affixed thereto. Additionally, the Attorney General noted that Kemper and FCCC had offered no explanation for their failure to respond to the request in any fashion.

In defense of the agency's actions, the Attorney General stated that FCCC's failure to produce the records identified in that request "is attributable to the ambiguity of the request and cannot be deemed a violation of the Act." The Attorney General found no violation of the Open Records law with regard to the failure to produce the requested records, as Sykes did not clearly identify specific records within the custody or control of the agency.

The Attorney General directed FCCC/Kemper to reply to Sykes' request by August 2, 1999. No timely response was made by the agency. Sykes then filed a second Open Records request on August 30, 1999. The agency responded to that request in a timely fashion.

Sykes then filed an action against Kemper seeking damages for his violation of the Kentucky Open Records Act. Counsel for Kemper filed a Motion to Dismiss, which was granted by the Franklin Circuit Court. Sykes appeals the dismissal of his action.

It was the decision of the Attorney General's Office that Sykes' request satisfied the requirements of KRS 61.872(2), and was a proper written request for records. Sykes' request stated: "Dear Records Office: I am in need of a copy of my arrest record for child support from the dates of 5/11/92 through 7/23/92 also between 1/17/93 through 5/93 Your assistance is both needed and appreciated." Id. citation to birthday and social security number deleted. KRS 61.880(1) mandates agency response to an Open Records request within three working days. No response was ever provided by the agency to Sykes' request. KRS 61.880(2) provides for review of a denial of public records by the Attorney General's office. Pursuant to KRS 61.882, the circuit court of the county where the public agency has its principal place of business is charged with enforcing the Open Records laws. Sykes requests damages for this breach of law.

The Commonwealth erroneously asserts that the Attorney General found no violation of the Open Records Act on the part of

FCCC or Kemper. The Commonwealth misconstrues the Attorney General's opinion. Although the Attorney General found that there was no violation in the agency's failure to produce the requested records, the Attorney General's Office found a clear violation of the Act in the agency's failure to timely respond to Sykes' request. When any state agency is notified of a statutory violation by enforcement officials exercising their jurisdictional duties, the deficiency must be promptly remedied. This has been made clear in our prior rulings under the Open Records Act.

In construing KRS 61.880, this Court has held that: "The language of the statute directing action is exact. It requires the custodian of records to provide particular and detailed information in response to a request for documents." Edmondson v. Aliq, Ky. App., 926 S.W.2d 826 (1996). The duty to properly respond does not place an undue burden upon public servants. The agency may deny the request, or may ask for a more specific request, or may even tell the person asking for the documents that another custodian has the records, but the agency is required to promptly respond to the request in some fashion. Id. at 858. As the Court pointed out, failure to respond is "at the possible expense of due process." Id. at 859. In the present case, the agency failed to comply with a specific directive from the Attorney General. Whatever the amount of damages, if any, suffered by Sykes as a result of the statutory violation, it pales in contrast to the agency's violation of a direct order from law enforcement officials charged with ensuring

enforcement of the Act. A state agency's failure to respond to a statutorily authorized inquiry will only serve to create delay and dissension, and so must not be condoned.

The Commonwealth argues that we should not pass on the merits of this case, asserting that Sykes did not raise the issue of the agency's failure to respond to his request in the circuit court action, and that he is consequently barred from raising it on appeal. We disagree. The circuit court action was filed by Sykes pro se. Pro se complaints should be held to less stringent standards than those filed by trained legal professionals. See Malone v. Colyer, 710 F.2d 258 (6th Cir. 1983). In his complaint, Sykes noted that the Attorney General's Office found that "F.C.C.C.'s failure to respond to Mr. Sykes' June 23 and June 28, 1999 request in a proper and timely fashion constituted a violation of KRS 61.880(1)." Sykes also claimed that "Defendants violated KRS 61.880(1) when they failed to respond to Plaintiff's June 23 and June 28, 1999, request in a proper and timely fashion." In his Response to Motion to Dismiss, Sykes further argued that the failure of the agency to provide a timely response denied "plaintiff's constitutional rights to due process by not filing his request as an open records request, then redirecting the request." These assertions fully satisfied the requirement that the issues raised on appeal first be heard by the circuit court.

Kemper asks that Sykes' complaint be dismissed because Sykes eventually received the requested records, and because he can show no specific damage from the late delivery of the

records. Although this argument may indicate that Sykes is not entitled to great compensation for the breach of the Open Records Act, it does not form a proper basis for dismissal of the complaint. For this reason we reverse the trial court's dismissal of the action.

KRS 61.882(5) provides that:

Any person who prevails against any agency in any action in the courts . . . may, upon a finding that the records were wilfully withheld, be awarded costs, including a reasonable attorney's fee, incurred in connection with the legal action.

Id. Sykes requested relief from the circuit court, asking for a reasonable attorney's fee, and an award of \$25.00 per day for each day that the requested records were withheld. Sykes claims that the records were withheld from June 26, 1999 until September 2, 1999.

The Commonwealth responded, in its Motion to Dismiss, by asserting that the Office of the Attorney General had directed Sykes to clarify his ambiguous request, and showing that the records had been promptly mailed following such clarification. Kemper claims that this establishes that Sykes was not entitled to any relief in the circuit court.

Sykes argues that, pursuant to Department of Corrections v. Courier-Journal, Ky. App., 914 S.W.2d 349 (1996), the duty of the courts is to give effect to the laws created by the General Assembly. This Court must give effect to all provisions of the Open Records Act as written, as prior opinions have made clear. Unnecessary litigation regarding admittedly

public documents can only be avoided by requiring compliance with the plain language of the statute. The Act does not permit dismissal of an action, or disallowance of sanctions, costs or attorney's fees, simply because the records were eventually supplied to the complainant. KRS 61.882(5) provides for an award of costs, attorney's fee, and even a fine, should the trial court, in the exercise of its discretion, so rule. Although Sykes has the burden before the circuit court of proving any harm suffered due to the agency's failure to respond to his request, as stated in Craig v. Kentucky State Board for Elementary and Secondary Educ., Ky. App., 902 S.W.2d 264, 266 (1995), the fact that he received the records three months later does not entitle the agency to dismissal of his complaint.

For the foregoing reasons, we reverse the trial court's dismissal of the action, and find that Kemper violated the Kentucky Open Records Act in failing to promptly respond to Sykes' request as required by law and as directed by the Attorney General. This case is remanded for a determination of what financial sanctions, if any, are applicable under the facts of this case.

ALL CONCUR.

BRIEF FOR APPELLANT:

George William Sykes, Pro Se
Central City, Kentucky

BRIEF FOR APPELLEE:

Robert L. Chenoweth
Patricia Bausch
Chenoweth Law Office
Frankfort, Kentucky