

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-000995-MR

AARON L. WILSON

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT  
HONORABLE PAUL F. ISAACS, JUDGE  
ACTION NO. 06-CI-00389

SCOTT COUNTY BOARD OF EDUCATION,  
AND SCOTT COUNTY SCHOOLS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, MOORE, AND TAYLOR, JUDGES.

CLAYTON, JUDGE: Aaron L. Wilson appeals from an opinion and order of the Scott Circuit Court, which denied his motion for summary judgment seeking an order compelling the Scott County Board of Education (SCBE) to comply with the Kentucky Attorney General's decision (05-ORD-277) enforcing an Open Records Act request. Furthermore, Wilson appeals the granting of the SCBE's motion for summary judgment, which held that SCBE had complied with the Open Records

Act request. After reviewing the appellant's arguments, the record, and the applicable law, we affirm.

## BACKGROUND

In early 2004, Wilson applied for a position as a substitute teacher with the SCBE. Pursuant to statutory requirement and as a part of the application process, he submitted to a national and state criminal background check. The background check was negative, and he was hired as a substitute teacher from April 2004 until June 2005. Thereafter, Wilson became a substitute teacher for the Paris Independent School District from July 2005 until October 2005. Then, Wilson reapplied with the SCBE to once again be hired as a substitute teacher.

SCBE informed Wilson that in order to be hired as a substitute teacher, he would have to resubmit to a criminal background check at his own expense. Wilson, by facsimile, informed SCBE Director of Human Resources, Randy Napier, that he did not have to resubmit to the criminal background check because “certified individuals who are employed in another certified position(s) in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employer” were excluded. (Whether or not Wilson’s contention is correct is not an issue in this appeal, and hence, we will not address it.)

Wilson, however, was willing to submit to a criminal background check but not at his expense. In the aforementioned facsimile, he asked that SCBE to pay for the criminal background check and “immediately” put his name on the

substitute list. SCBE refused both requests.

Following this exchange of emails between Wilson, Napier, and Ann Brock, a secretary at the SCBE, Wilson made the open records request on November 10, 2005, to the official custodian of the records, Dr. Dallas J. Blankenship, Superintendent. These requests are the subject of the appeal. In his request, Wilson asked for the following records:

1. All policies that the board has enacted pertaining to the re-employment of substitute teachers;
2. All policies that the board has enacted pertaining to the employment of retired teachers, from both within and outside SCPS [presumably Scott County Public Schools], as substitute teachers[;] and
3. The policies that Ann Brock mentioned to me on October 25, 2005, and Randy Napier e-mailed to me on November 8, 2005, which provide for the omission of my name from the current Substitute List.

Napier responded to Wilson's request by electronic mail and gave Wilson the option of obtaining the requested records online or at the public library. On that same date, Wilson initiated an appeal of the SCBE's actions regarding the records in question to the Office of the Attorney General (OAG) under Kentucky Revised Statutes (KRS) 61.880(2).

The Attorney General's office issued an opinion on December 21, 2005, which held "the Board must permit Mr. Wilson to inspect the requested record(s) and/or produce copies to be mailed upon receipt of all fees and the cost of mailing in order to comply with the Open Records Act." Neither party appealed

the Attorney General's opinion.

Subsequently, on January 2, 2006, Napier sent Wilson a letter, which gave the SCBE office location and hours. The letter also provided a description of the SCBE official manual and where it was kept. Furthermore, the letter stated that the following records were enclosed therein:

All policies that the board has enacted pertaining to the reemployment of substitute teachers.

All policies that the board has enacted pertaining to the employment of retired teachers, from within and outside SCPS, as substitute teachers.

The names and contact information of the individuals who comprise the current Substitute List.

Finally, the letter asked Wilson for a specific time that he would like to come to the office to inspect the records. Tentatively, the SCBE scheduled an appointment for January 5, 2006, at 10:30 a.m., and gave him a telephone number if he needed to re-schedule. While Mr. Wilson did not make the scheduled appointment, no evidence is provided showing that he did not receive the letter nor attempt to re-schedule the appointment.

Wilson, on March 13, 2006, sent a letter to the SCBE, which stated that it had not complied with the Attorney General's decision and demanded that it do so by March 17, 2006. In response, the SCBE sent Wilson another letter by its counsel stating that he could come on March 17, 2006, from 8 – 11:00 a.m. (the offices closed early that day) or on Monday, March 20, 2006, during normal office hours (8:00 a.m. – 4:00 p.m.). Wilson arrived at noon on March 17th, and the

offices were closed, as he had been informed by letter. He later returned on March 20, 2006, and inspected the documents.

On July 5, 2006, Wilson filed an action in the Scott Circuit Court seeking enforcement of the Attorney General's opinion and \$25.00 for every day that he was unable to inspect or copy the records, court costs and attorney fees. In turn, both parties filed cross-motions in support of summary judgment. The court concluded that SCBE had complied with the Attorney General's decision within a reasonable time, and therefore, the questions of fines and attorney fees were not relevant. Thus, the court in its Opinion and Order, dated April 18, 2007, denied Wilson's motion for summary judgment and granted the SCBE's motion for summary judgment. This appeal followed.

#### ANALYSIS

Summary judgment is properly entered when there exist no material issues of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). Resolution of this appeal rests upon ascertaining whether the SCBE complied with the Attorney General's decision and appropriately responded to Wilson's open records request. And, if not, we must determine whether or not Wilson is entitled to fines and attorney fees. The question is one of law, and our standard of review is thus *de novo*, requiring no deference to the decision of the trial court. See [\*Floyd County Bd. of Education v. Ratliff\*, 955 S.W.2d 921 \(Ky. 1997\)](#).

Furthermore, in *Lexington-Fayette Urban County Government v.*

*Lexington Herald-Leader Co.*, 941 S.W.2d 469 (Ky. 1997), and *Kentucky Board of Examiners of Psychologists v. The Courier-Journal and Louisville Times Co.*, 826 S.W.2d 324 (Ky. 1992), the Court noted that the Open Records Act envisions a case-specific approach to determining whether access to records is appropriate by providing for *de novo* judicial review of agency actions, and requiring that the agency present proof to sustain its action.

The General Assembly has expressed that the policy of the Open Records Act as “free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.” KRS 61.871. Furthermore, “the Open Records Act requires public agencies to make all public records open for inspection and copying by any person, except when specifically exempted.” *Kentucky Lottery Corp. v. Stewart*, 41 S.W.3d 860, 862 (Ky. App. 2001).

The issue herein is whether the SCBE complied with the December 21, 2005, OAG decision, which found a procedural and substantive violation of the Open Records in the SCBE’s first response to Wilson’s open records request. The OAG’s opinion mandated that the SCBE provide the requested records.

First, let us examine the Attorney General’s Opinion in this case. According to the opinion, SCBE was procedurally incorrect in not providing a response within three business days as mandated by KRS 61.880(1). (SCBE

disputes that it did not meet the three-day time limit, however, we will not address this dispute as it is not germane to the appeal.) Likewise, the Attorney General found that SCBE was substantively incorrect by directing Wilson to the Internet for the records and suggesting that hard copies of the records could be obtained at the public library. The opinion, 05-ORD-277, on page 6 specifically states that “the Open Records Act contemplates access to records ‘by one of two means: On-site inspection during the regular office hours of the agency, in suitable facilities provided by the agency, or receipt of the records from the agency through the mail.’ 03-ORD-067, p. 4.”

It is uncontroverted that Napier on January 2, 2006, sent Wilson a letter, offered a time to meet with him, and described the binder containing the policies and its location. In that same letter, Napier included copies of all policies relating to the re-employment of substitute teachers and all policies pertaining to the re-employment of retired teachers, from within and outside Scott County Public Schools, as substitute teachers, and the names, with contact information, for all individuals on the substitute list. Wilson argues that the SCBE did not comply with his open records request and the Attorney General’s opinion because neither the letter nor anyone else has identified for him “the policies that Ann Brock mentioned to him on October 25, 2005 and Randy Napier mentioned to him on November 8, 2005 . . . .”

We agree with the trial court that the SCBE fulfilled all its responsibilities following the issuance of the Attorney General’s Opinion and that

Wilson has failed to demonstrate, after the issuance of the decision, that SCBE's actions violated either the opinion or the Open Records Act. Above, we noted SCBE's actions on January 2, 2006, to provide the requested records and follow the requirements of the OAG opinion. In fact, the SCBE again responded to Wilson in a letter from its attorney, dated March 15, 2006. He was given another time to come to the board to inspect his records, which he did on March 20, 2006.

Apparently, Wilson is seeking for the SCBE to make a connection between the policies and the omission of his name from the substitute list. But it seems to us that Wilson's third request for documents was subsumed in the documents supplied in response to his first two requests. Napier and Brock in their affidavits state that Wilson's phone conversations were about the policies for re-employment as a substitute teacher. For instance, Brock, in her affidavit, states that Wilson was given the policies relating to Hiring (3.11) and Substitute Teachers (3.111) and that these policies are the ones that answered his third request.

Wilson is asking for the public agency to give him information about this omission from the substitute list rather than supply him with a certain record. The Attorney General, however, has long recognized that a public agency is not obligated to honor a request for information as opposed to a request for specifically described records. Although we are aware that we are not bound by Attorney General opinions, our reasoning is in line with various Attorney General opinions. For instance, OAG 79-547, page 2 states that "[t]he purpose of the Open Records Law is not to provide information but to provide access to public records which are



not exempt by law.” Hence, public agencies are not required to gather and supply information independent of that which is set forth in public records. As is stated on page 5 of OAG 89-81:

Open Records provisions were not intended to serve as a comprehensive audit tool, or as a means of commanding compilation of and production of specific information. Open Records provisions are intended to provide for inspection of reasonably described records held by public agencies. . . . Open Records provisions do not provide for, and agency workers are not required to provide under them, instruction in understanding of the meaning or import of information shown upon records produced.

Moreover, KRS 61.872(2) requires the applicant seeking records to describe them with enough specificity to allow the public agency to identify and locate the records. We do not find Wilson’s third request – “[t]he policies that Ann Brock mentioned to me on October 25, 2005, and Randy Napier e-mailed to me on November 8, 2005, which provide for the omission of my name from the current Substitute List,” gives enough specificity to implicate any other records that the SCBE should have supplied him.

On another point, Wilson also argues that the SCBE was procedurally deficient following the Attorney General’s Opinion (December 21, 2005) because it did not send him the information until January 2, 2006, and that was outside the three (3) day time period from the opinion’s issuance. The opinion, however, gives each party thirty (30) days to appeal the Attorney General’s decision to the circuit court. Here, the SCBE’s response was well before the 30-day time limit for an appeal, and thus, timely.

Additionally, since we have found that the SCBE met both its legal requirements – substantively and procedurally - there is no need to address the issue of fines and attorney fees. Nothing in the Attorney General Opinion suggests that SCBE willfully prevented Wilson access to the pertinent records or that the school board was acting in bad faith. In other words, initially, the Attorney General simply found that SCBE did not respond to Wilson in the proper statutory manner. Once the Attorney General ruled, SCBE quickly and adequately complied with the Open Records Act.

Based on the foregoing analysis, we affirm in all respects the order of the Scott County Circuit Court, granting SCBE’s motion for summary judgment and denying Wilson’s motion for summary judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

Charles W. Arnold  
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BRIEF FOR APPELLEE:

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