

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2001-CA-001502-MR

TILMON RUFUS PARTIN

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 01-CI-00259

KENTUCKY STATE POLICE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, GUIDUGLI, and SCHRODER, Judges.

COMBS, JUDGE. Tilmon Rufus Partin, a federal prison inmate, appeals, *pro se*, from the order of the Franklin Circuit Court dismissing his petition for declaratory and injunctive relief and denying his motion to sanction the appellee, Kentucky State Police ("KSP"). Having concluded that Partin's reliance on the Kentucky Open Records Act (KRS<sup>1</sup> 61.870 to 61.884) has no merit, we affirm.

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<sup>1</sup> Kentucky Revised Statutes.

On March 2, 2001, Partin filed a petition in the trial court alleging that on January 25, 1999, he had requested records pertaining to him that had been maintained by the KSP. He made a second request on March 19, 1999. He claimed that the agency did not reply to either request and that he had a statutory right to the records. He sought a declaration by the trial court that KSP's refusal to provide the records was unlawful and petitioned the court for an order requiring KSP to make all his records available to him.

On April 26, 2001, KSP moved for summary judgment. It argued that it had not received any request from Partin prior to the filing of his lawsuit. Additionally, KSP contended that the matter was moot since a search of its records revealed that it had no records relating to Partin. It supported its motion for summary judgment with the affidavit of the custodian of KSP's records, who stated that she had performed a records check for Partin and that nothing was found. On May 9, 2001, the trial court entered an order granting KSP's motion for summary judgment.

After entering the order, the trial court discovered Partin's response to the motion, in which Partin charged that the custodian's affidavit contained false and inaccurate information. Partin provided evidence indicating that he had voluntarily submitted to a polygraph examination in London,

Kentucky, in 1997. He argued that the results of that polygraph supported his claim of the existence of records concerning him. He asked the trial court to sanction KSP for making false statements in denying their existence. The trial court gave Partin additional time to respond to the motion for summary judgment.

In response to Partin's allegation as to the polygraph, KSP again obtained an affidavit from its records custodian, who explained the omission. She stated that the polygraph information had not been previously discovered because it was located at the Harlan KSP post as part of an open criminal investigation. KSP argued that KRS 17.150(2) provided a clear exception with respect to records involved in an open investigation, specifically exempting them from discovery or release.

In the order from which Partin appeals, the trial court denied Partin's request for a sanction and determined that KSP had acted appropriately in denying Partin's request for these records pursuant to KRS 17.150(2). It further ordered KSP to notify Partin when its investigation was formally closed in order that he could file a new request at that time.

Partin argues on appeal that the trial court exhibited a "pro-state bias" by refusing to consider his compelling evidence that KSP had not acted in good faith with respect to

his records request. He also argues that the trial court erred in failing to require KSP to produce affirmative evidence other than a mere statement that his polygraph records were contained in the file of an on-going investigation. He requests an order remanding the matter for a factual inquiry as to whether his records were actually in files as opposed to being a part of an open and ongoing investigation. He also asks for costs related to his efforts to obtain records unreasonably withheld from his inspection. We disagree that Partin is entitled to the relief he seeks.

The trial court did not err in its ruling with respect to the Open Records Act. It correctly concluded that Partin would be entitled to review his records only at the conclusion of an ongoing investigation as provided by the statute. It also ordered KSP to notify Partin when the investigation ended in order to enable him to file a renewed request.

Additionally, we note another reason compelling us to affirm - one not alluded to or relied upon by the trial court. Partin failed to exhaust administrative remedies available to him before filing this appeal. As an inmate of a penal institution, Partin was required to seek relief first from the Attorney General regarding the denial of a records request. If he had still been aggrieved, he would then have filed an appeal

in circuit court. KRS 197.025(2). While Partin states in his brief that he did attempt to obtain relief from the Attorney General, he complained that the Attorney General:

sought to assert procedural non-compliance [sic], refuse disclosure, stone-wall, and generally not comply with state law relative to Freedom of Information.

His petition for declaration of rights did not seek a review of any action or ruling by the Attorney General - nor is there is any documentation in the record to substantiate his claim that he had ever sought the Attorney General's review of KSP's actions. Therefore, Partin was not entitled to file an action in circuit court seeking redress from the denial of a records request without having first exhausted his administrative remedies. He lacked standing procedurally to seek relief in the Franklin Circuit Court in the first instance. Insofar as the court reviewed the substantive allegations of his petition, it did so without error.

The judgment of the Franklin Circuit Court is affirmed.

GUIDUGLI, JUDGE, CONCURS.

SCHRODER, JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANT:

Tilmon Rufus Partin, *pro se*  
Atlanta, Georgia

BRIEF FOR APPELLEE:

James M. Herrick  
Frankfort, Kentucky