



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**22-ORD-023**

February 16, 2022

In re: Joye Keeley/Estill County Judge Executive's Office

**Summary:** The Estill County Judge Executive's Office (the "Judge Executive's Office") violated the Open Records Act ("the Act") when it did not provide records within five business days or properly invoke KRS 61.872(5).

***Open Records Decision***

On October 4, 2021, Joye Keeley ("Appellant") submitted a request to the Judge Executive's Office for records related to Estill County's Animal Control and the Estill County Animal Shelter. The scope of the Appellant's request included payroll records, personnel records, budget records, contracts, uniform citations for various animal abuse crimes, and seizure and euthanasia records for animals over a two to three year period. On October 13, 2021, the Judge Executive's Office responded and stated "[w]ith the limited number of office staff it could possibly be at the very least 4 to 5 weeks getting info to" the Appellant. On December 27, 2021, the Appellant sent an email to the Judge Executive's Office that asked why she had yet to receive the requested records. On January 18, 2022, having received no additional response, or any of the public records she requested, this appeal followed.

When an agency receives a request under the Act, it is required to respond to the request and provide any nonexempt responsive records within five business days. KRS 61.880(1). However, an agency may extend this time if the records are "in active use, in storage or not otherwise available," so long as the agency gives the requester "a detailed explanation of the cause . . . for

further delay and the place, time, and earliest date on which the public record[s] will be available for inspection.” KRS 61.872(5). Here, the Judge Executive’s Office did not issue a response to the Appellant’s request within five business days. Thus, its untimely response violated the Act.

In addition to being untimely, the Judge Executive’s Office’s response also did not properly invoke KRS 61.872(5). The Judge Executive’s Office did not cite KRS 61.872(5), or indicate whether the records were “in active use, storage, or otherwise unavailable.” Instead, the Judge Executive’s Office stated cause for delay was a “limited number of office staff” due to Covid-19. Although this Office is sympathetic to workforce shortages due to Covid-19, this Office has long held that employee absences is not a basis for extended delay. *See, e.g.*, 09-ORD-191; 00-ORD-226. Moreover, the Judge Executive’s Office’s response also failed to state the earliest date on which the records would be available. Instead, the Judge Executive’s Office vaguely indicated that “it could possibly be at the very least 4 to 5 weeks getting info to” the Appellant.<sup>1</sup> Consequently, the Judge Executive’s Office violated the Act when it did not properly invoke KRS 61.872(5).

On appeal, the Judge Executive’s Office explains that it estimates there are “ten thousand pages of documents . . . present in two different locations that need to be examined to determine if they are of the nature and scope of the request and if any information contained within them needs to be redacted to protect personal identifying information.” The Judge Executive’s Office further explains that it “has been consistently understaffed due to Covid-19 isolations and quarantines” as well as “the Judge Executive himself was ill[.]” Although, the Judge Executive’s Office does not deny the Appellant’s right to inspect these records, it does contend that the “scope and breadth of the request has placed a significant burden upon the office and to prevent the disruption of other essential functions the additional time was and is warranted[.]” Nevertheless, the Judge Executive’s Office insists that it is not denying the request under KRS 61.872(6) as an unreasonably burdensome request. The Judge Executive’s Office has invited the Appellant to inspect the potentially

---

<sup>1</sup> Regardless, the Judge Executive’s Office failed to provide responsive records within the four to five week period, or send any communications to the Appellant, thus causing additional delay.

responsive records in person to avoid “cost prohibitive” copying fees associated with “ten thousand pages” of potentially responsive documents.

While it may be prudent for the Appellant to inspect the records in person, under KRS 61.872(2), it is her choice whether to inspect the records in person or accept copies by mail upon submitting reasonable copying and mail costs. Moreover, the Judge Executive’s Office still has not stated the earliest date these records would be made available to the Appellant, whether for her in-person inspection or receipt by mail. Because the Judge Executive’s Office still has not provided the earliest date on which records will be available, it violated the Act.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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.

**Daniel Cameron**  
**Attorney General**

/s/Matthew Ray  
Matthew Ray  
Assistant Attorney General

#018

Distributed to:

Joye Keeley  
Jason Riley