



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-044

March 8, 2022

In re: WKRC-TV/Jenkins Independent School District

Summary: The Jenkins Independent School District (“the District”) violated the Open Records Act (“the Act”) when it failed to respond to a request for records in a timely manner and when it denied the request without citing an exception to the Act. The District failed to meet its burden on appeal to sustain the denial.

Open Records Decision

On November 10, 2021, WKRC-TV (“Appellant”) requested that the District provide copies of “all venue-specific emergency action plans (EAP)” and “written verification of the existence of a venue-specific EAP that was submitted to the state board or KHSAA (i.e. any and all records of compliance).”¹ On November 30, 2021, the District responded by e-mail in which the assistant superintendent stated that “individual school districts in Kentucky are not permitted to release any Emergency Management Plans.” The District cited no exception to the Act in support of its denial. This appeal followed.

Under the Act, a public agency has five business days to fulfill a request for public records or deny such a request and explain why. KRS 61.880(1). Here, the District did not respond to the original request within five business

¹ Under KRS 160.445(4)(a), “each school that participates in interscholastic athletics [must] develop a venue-specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly.” These plans must be “in writing [and] posted conspicuously at all venues.” KRS 160.445(4)(a)2. Under KRS 160.445(4)(b), “[e]ach school shall submit annual written verification of the existence of a venue-specific emergency action plan to the state board or its agency.”

days. Furthermore, under KRS 61.880(1), an agency response denying inspection of public records must “include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” Because the District’s response neither identified an exception to the Act nor explained how it applied to the requested records, the District violated the Act.

Although this Office provided notice of the appeal to the District and invited it to respond, the District did not respond to this appeal. In an open records appeal, “[t]he burden of proof in sustaining the action shall rest with the agency.” KRS 61.880(2)(c). Because the District’s response to the request was insufficient to sustain its denial and the District has submitted no response to the present appeal, the District has failed to meet its burden of proof. Accordingly, this Office finds that the District violated the Act when it denied the Appellant’s request for the reasons stated in its untimely response.

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 e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

Darren W. Ford, Esq.
Damian Johnson, Superintendent
Tim Crawford, Esq.