



COMMONWEALTH OF KENTUCKY
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22-ORD-046

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In re: Jessica Shoemaker/Jackson County Sheriff's Office

Summary: The Jackson County Sheriff's Office ("the Sheriff's Office") subverted the intent of the Open Records Act ("the Act") within the meaning of KRS 61.880(4) through delay and excessive extensions of time. The Sheriff's Office also violated the Act when it failed to notify a requester that it was not the custodian of the requested records. However, the Sheriff's Office did not violate the Act when it initially denied a request that did not clearly identify the requester as a Kentucky resident or when it issued a response through an authorized agent of the official custodian of records.

Open Records Decision

On December 16, 2021, Jessica Shoemaker ("Appellant"), who is located in Tennessee, made a request to the Sheriff's Office for the personnel files of two deputies. She stated that she was requesting the records "as an investigator working pursuant to Chapter 31 for the Department of Public Advocacy in the cause of representing an indigent client." On December 28, 2021, the Sheriff's Office denied the request under KRS 61.872, which grants only Kentucky residents the right to inspect public records.¹ That same day, the Appellant again clarified that she was working as an agent of "an attorney with the Kentucky Department of Public Advocacy." She therefore claimed she was entitled to make the request under KRS 61.870(10)(f), which defines "resident of the Commonwealth" as "[a]ny individual or business entity that

¹ The record on appeal does not indicate when the Sheriff's Office received the request. Thus, it is unclear whether the response was issued within five business days from receipt of the request, as required under KRS 61.880(1).

has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection.”

On February 11, 2022, having received no further response, the Appellant asked the Sheriff’s Office about the status of her request. That same day, the Sheriff’s Office issued an apology and stated that it would “try” to provide the records “by the beginning of the week,” or February 14, 2022. Having received no records by February 18, 2022, the Appellant initiated this appeal.

First, the Appellant argues that the initial denial of her request was improper because she claims to have “clearly state[d]” in her request that she was working for the Kentucky Department of Public Advocacy pursuant to KRS Chapter 31. The Appellant’s request, however, did not contain the terms “Kentucky” or “KRS.” The request also did not cite to the provision of KRS 61.870(10) under which the Appellant claimed to qualify as a resident of the Commonwealth. Accordingly, the request did not contain a clear statement that the Appellant was a resident of the Commonwealth under the Act. “The official custodian may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).” KRS 61.872(2)(a). Thus, the Sheriff’s Office did not violate the Act when it initially denied the Appellant’s request.

The Appellant next complains that the response to her request was improperly issued, because the Jackson County Attorney, who is not the custodian of records for the Sheriff’s Office, issued the response. However, the Act merely requires a response to be “issued by the official custodian *or under his or her authority*.” KRS 61.880(1) (emphasis added). Therefore, so long as the Jackson County Attorney had authority to respond to the request on behalf of the official custodian, his response on behalf of the Sheriff’s Office did not violate the Act.

Finally, the Appellant asserts that the Sheriff’s Office has engaged in excessive delay in providing the requested records. 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). Under KRS 61.880(4), a person may petition the Attorney General to review an agency’s action if the “person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . delay past the five (5) day period described in [KRS 61.880(1) or] excessive extensions of time.” Here, the Appellant clarified

how she qualified as a Kentucky resident under the Act on December 28, 2021. She then asked the Sheriff's Office about her request again on February 11, 2022. However, the Appellant received no final disposition of her request before initiating this appeal, more than six weeks after the initial denial.

On appeal, the Sheriff's Office states that it unintentionally overlooked the Appellant's e-mail on December 28, 2021, which clarified her residential status. Furthermore, after responding to the Appellant's inquiry on February 11, 2022, the Jackson County Attorney learned that the Jackson County Fiscal Court, and not the Sheriff's Office, maintains the personnel files for employees of the Sheriff's Office. However, this fact was not conveyed to the Appellant prior to her initiating this appeal. The only explanation offered on appeal is that the Jackson County Attorney's Office was "busy" and "shorthanded" at the time. As this does not constitute sufficient justification for the delay, the Sheriff's Office subverted the intent of the Act within the meaning of KRS 61.880(4).²

Under KRS 61.872(4), "If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records." It was therefore the Sheriff Office's duty to notify the Appellant that it was not the custodian of the requested records. Thus, the Sheriff's Office violated the Act when it failed to advise the Appellant that it was not the custodian of the requested personnel files.

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.

² The Jackson County Attorney, who acted at all times as the agent of the Sheriff's Office in responding to this request, has indicated on appeal that his office takes full responsibility for all delays and other failures in this matter.

22-ORD-046

Page 4

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#55

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