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22-ORD-065

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In re: Roberto Ferdman/Louisville Metro Police Department

Summary: The Louisville Metro Police Department (“the Department”) violated the Open Records Act (“the Act”) when it failed to respond to a request within five business days, and when it failed to provide a detailed explanation for the cause of delay in providing certain records. The Department did not violate the Act when it provided all records responsive to the request as submitted.

Open Records Decision

On March 5, 2022, Roberto Ferdman (“the Appellant”) submitted a request to the Department in which he sought copies of “PIU case 08-469 in its entirety.” The Appellant specified that the scope of his request included all “transcripts and recordings” of all witness interviews, and noted “that the case file that was produced a year and a half ago is missing . . . the transcript of the interview with” a specific witness. On March 16, 2022, the Department responded and provided almost all records contained in the PIU file that the Appellant described. However, the Department claimed the requested audio files “are currently under review and will be available by or before Thursday, July 7, 2022.” This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). A public agency may also delay access to responsive records if such records are “in active use, storage, or not otherwise available.” KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must also notify the requester of the earliest date on which the records will be available, and provide a detailed explanation for

the cause of the delay. Here, the Department did not notify the Appellant that it was partially complying with his request until March 16, or seven business days after receiving the request.¹ Moreover, although the Department notified the Appellant that responsive audio files would be available on July 7, the Department failed to provide a detailed explanation for the cause of the delay. *See* KRS 61.872(5). Accordingly, the Department's response violated the Act.

On appeal, the Department claims that it provided the Appellant with the audio files on March 24, 2022, and that this appeal should be considered moot. *See* 40 KAR 1:030 § 6 ("If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter."). However, the Appellant claims that the appeal is not moot because the Department has failed to provide a transcript or recording of the specific witness the Appellant identified in his request.

Under KRS 61.872(a), a resident of the Commonwealth may only inspect those records that he has described. Here, the Department explains that the Appellant originally requested the entire case file for "PIU case 08-469." "PIU" stands for "Public Integrity Unit," which is a division in the Department that investigates alleged criminal conduct of Department officers. On the other hand, "PSU" stands for the "Professional Standards Unit," which is a division in the Department that investigates administrative violations of Department policy. The Department claims that the interview to which the Appellant is referring was conducted as part of PSU case no. 08-068. The Department explains that it has provided the Appellant with all responsive records within the specific file, PIU case no. 08-469, that the Appellant originally described in his request.

The Appellant originally requested the entire case file for PIU case 08-469. He did not request records contained within PSU case no. 08-068 until after this appeal was initiated. Although the Appellant appears to have thought that the interview was contained in the specific administrative file he

¹ The Appellant submitted his request to the Department using the Department's online portal for open records requests on Saturday, March 5. The Department's online portal automatically responded on March 5 that the request had been received. However, because March 5 was a Saturday, the Department would not have been aware of the Appellant's request until Monday, March 7. Thus, the Department's response was due on March 14, the fifth business day after receiving the request on March 7.

described, the Department has explained that the record does not exist in the file that the Appellant originally requested to inspect. Under KRS 61.880(2)(a), this Office must review the Appellant's original request and the Department's original response, and determine whether a violation has occurred. The Department has explained that it provided all records responsive to the Appellant's original request. Accordingly, the Department did not violate the Act when it provided all records responsive to the Appellant's original request as written.²

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/Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Roberto Ferdman
Natalie Johnson

² Although this Office declines to address the Appellant's slightly modified request in this appeal, the Appellant is of course free to submit a new request to the Department that describes the record he seeks to inspect. Both parties now know precisely which record the Appellant seeks.