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**22-ORD-123**

June 2, 2022

In re: Sebastian Kitchen/Department of Agriculture

**Summary:** The Department of Agriculture (“the Department”) did not violate the Open Records Act (“the Act”) when it sought clarification of an ambiguous request for public records. However, the Department violated the Act when it failed to respond to a second request for public records.

***Open Records Decision***

On February 10, 2022, Sebastian Kitchen (“Appellant”) requested the Department provide “[a]ny and all records and or email communications sent to or from private, non-state-issued email accounts to the Department of Agriculture, the Commissioner of Agriculture, Ryan F. Quarles, or Kentucky Department of Agriculture personnel, related to litigation involving the Kentucky Department of Agriculture and/or Ryan Quarles, Commissioner of Agriculture.” In a timely response, the Department stated that it would not provide any records subject to the attorney-client privilege, common-interest privilege, joint-defense privilege, or any exception to the Act. However, the Department requested that the Appellant clarify his request by stating “which ‘litigation’ [he was] referring to.” The Appellant refused to do so.

Rather than clarifying his February 10 request, the Appellant submitted a new request on April 20, 2022, seeking “all emails and text messages related to any litigation in which the Department of Agriculture is a party that were sent from January 1, 2016 to the present day between any 2 or more of [four named] individuals.” The Department did not respond to the April 20 request. This appeal followed.

On appeal, the Department explains that it asked for clarification of the Appellant's first request because it was ambiguous as to the meaning of "records . . . related to litigation involving" the Department or its commissioner. The Department states that, in addition to "at least eight civil lawsuits" in which the Department or the commissioner has been a party, Department "personnel have been named as testifying witnesses (or potential testifying witnesses) in an unknown number of civil lawsuits as well as criminal proceedings." Thus, the language of the request was ambiguous as to which records the Appellant sought "related to litigation involving" the Department. Additionally, the Department notes the request contained no restriction on temporal scope. At a minimum, a request to inspect public records must describe those records in a manner "adequate for a reasonable person to ascertain the nature and scope of [the] request." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008). This Office has frequently observed that a "request in good faith for clarification of an ambiguity, or for further information needed to locate the correct records, does not violate the [Act]." *See* 19-ORD-035; *see also* 19-ORD-028; 14-ORD-037; 06-ORD-253. Therefore, the Department did not violate the Act when it sought a clarification of the ambiguities in the Appellant's February 10 request.

However, the Department did not respond after receiving the Appellant's April 20 request. Under the Act, a public agency that receives a request to inspect records "shall determine within five [business days] whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision." KRS 61.880(1). Accordingly, the Department violated the Act when it failed to respond to the Appellant's April 20 request for records.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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 a complaint e-mailed to [OAGAppeals@ky.gov](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
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/s/ James M. Herrick  
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