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22-ORD-143

June 29, 2022

In re: David Pennington/Floyd County Board of Education

Summary: This Office cannot find that the Floyd County Board of Education (the “Board”) violated the Open Records Act (“the Act”) when it attempted to fulfill a request for information.

Open Records Decision

On May 2, 2022, David Pennington (“Appellant”) submitted a request to the Board in which he sought certain information related to various contracts. The Appellant specified that he did not wish to inspect the contracts themselves. Rather, the Appellant listed three specific types of information about the contracts that he claimed the Board must provide to him. First, he requested “[t]he person[] or entities who hold all the contracts through the [Board].” Second, he requested “[t]he title of those contracts, the length [of time] and the [dollar] amount of those contracts.” Third, he requested “where each of those [contracts] were advertised and the dates in which they were advertised as well as the end dates in which they will be re-bid.”

On May 4, 2022, the Board confirmed receipt of the request but invoked KRS 61.872(5) to delay access to the records “due to the amount of information requested.”¹ The Board stated that it would make the records available to the Appellant “within the next 20 working days.” On May 17, 2022, the Board notified the Appellant again,

¹ KRS 61.880(1) allows five business days for a public agency to fulfill or deny a request for public records. This period may be extended if the records are “in active use, in storage or not otherwise available,” but the agency must give “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).

and explained that because he “requested information rather than documents that could have been copied and sent . . . it would take some [additional] time to gather this information.” The Board then provided three pages of responsive records.² The responsive records consisted of two spreadsheets related to the Board’s food service contracts and one-page that listed aspects of various other contracts.³ The Board also informed the Appellant that “all contracts [it] approved” are on the Board’s website, and provided a web address.⁴ On June 1, 2022, having received no further response from the Board, the Appellant then appealed.

On appeal, the Appellant argues that his initial request was not a request for information, but was for “the documents that show the title of each active contract awarded, whom they were awarded to, the amount paid and where they paid for th[e] advertising.” He further clarifies that he did not “request information just the documents that list those specific items.” The Board explains that even though the Appellant’s request was for information, it nevertheless “attempted to compile the requested information for [the Appellant] and . . . directed him to [its website] where the documents could be found for additional review” after this appeal was initiated.⁵

Under KRS 61.872(3)(b), if the requester elects to enforce the statutory right of inspection by obtaining copies of public records in lieu of in-person inspection, the requester must “precisely describe[] the public records which are readily available within the public agency.” Here, because the Appellant’s request specified that he wanted to inspect records by receiving copies of them, he must “precisely describe” the public records he wants to inspect. Yet, he did not “precisely describe” public records that the Board has readily available within its possession. In fact, he stated that he did not want to receive copies of the “entire[]” contracts. Instead, he asked the Board to provide him with information that may be contained within the contracts. On appeal, the Appellant, attempts to modify his original request, and

² One factor this Office has considered in determining whether a delay is reasonable, is if the public agency has committed to releasing records in batches. *See, e.g.*, 21-ORD-105; 21-ORD-080; 21-ORD-045.

³ It is not clear if these documents were records already in the Board’s possession that it provided or if these documents were generated specifically to fulfill the Appellant’s request.

⁴ The web address the Board provided is a list of approximately 150 meetings with additional hyperlinks to meeting minutes and related documents for each of the 150 different meetings and is available at <https://portal.ksba.org/public/Agency.aspx?PublicAgencyID=59&AgencyTypeID=1> (last accessed June 23, 2022).

⁵ This Office has found that a public agency violates the Act when it directs a requester to search the agency’s website for responsive records in lieu of providing copies of requested records readily available within the agency’s possession. *See, e.g.*, 21-ORD-129; 17-ORD-177; 06-ORD-131.

claims that he did not “request information[,] just the documents that list those specific items” but he again fails to “precisely describe” any public records. Accordingly, the Appellant’s initial request was for information and not a request for records.

The Act does not require a public agency gather and supply information not kept as part of its records. *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013). This Office has consistently held that a public agency is not required to fulfill a request for information. *See, e.g.*, 22-ORD-054; 20-ORD-051; 16-ORD-068; 14-ORD-103. Nor is a public agency required to create new records that contain only the information requested when public records that already exist might contain such information. *See, e.g.*, 21-ORD-241 (requiring an agency to produce for inspection a database that existed at the time of the request, but not requiring the agency to add to that database fields of information that did not already exist in the database at the time of the request).

Since the Appellant’s request sought information as opposed to precisely described public records, the Board was not obligated under the Act to fulfill the request. Regardless, the Board attempted to fulfill the Appellant’s request for information. Therefore, this Office cannot find that the Board violated the Act when it attempted to fulfill a request for information, even though the Board did not complete its attempt within five business days.

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 the complaint emailed to OAGAppeals@ky.gov.

Daniel Cameron
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s/Matthew Ray
Matthew Ray
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Distributed to:

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