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22-ORD-160

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In re: Bobby Hammonds/Department of Public Advocacy

Summary: The Department of Public Advocacy (“the Department”) violated the Open Records Act (“the Act”) when it failed to respond to two requests within five business days.

Open Records Decision

On June 13, 2022, inmate Bobby Hammonds (“Appellant”) submitted a request to the Department’s Richmond office seeking “any disposition” of his letter to his attorney dated May 11, 2022, in which he had requested copies of certain documents from his case file. On the same date, the Appellant submitted a request to the Department’s Somerset office seeking “a copy of the disposition relating to” a letter dated May 13, 2022, in which the Appellant’s brother had asked his attorney to send a copy of his case files to the Appellant. The Department did not respond to either request. These consolidated appeals followed.

Under the Act, a public agency must issue a written response to a request for public records within five business days from its receipt of the request. KRS 61.880(1). On appeal, the Department argues that it was not required to respond to either request because the requested documents are not “public records” under the Act.

Under KRS 61.870(2), “[p]ublic record’ means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.” Some public records, however, are exempt from inspection under KRS 61.878(1). In 2021, the General Assembly created a new exemption under KRS 61.878(1), which exempts from disclosure “[c]lient and case files maintained by the Department of Public Advocacy

or any person or entity contracting with the Department of Public Advocacy for the provision of legal representation under KRS Chapter 31.” KRS 61.878(1)(p).¹

The Department argues that, because of this exemption, its client and case files² are not “public records” and, therefore, that the Department has no duty to respond to any request to inspect such records under the Act. But the Department ignores the express language of KRS 61.878(1), which identifies all exempt materials as “public records.” The fact that the General Assembly has expressly exempted from inspection the Department’s client and case files means that those records are indeed “public records” under KRS 61.870(2). And any public agency, after receiving a request for records,³ must respond within five business days, state whether the request is granted or denied, and explain the statutory basis for any denial. KRS 61.880(1). *See, e.g.*, 16-ORD-252 (finding that KRS 61.878(1) “operates to permit certain public records to be withheld from public inspection, but does not exempt the public agency from any other requirements of the [Act], such as responding within [five business] days, explaining the specific exception authorizing the withholding of the record, etc.”). Accordingly, by failing to respond to the Appellant’s requests, the Department violated the Act.

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.

¹ Previously, KRS 61.878(1)(p) exempted from inspection “[c]ommunications of a purely personal nature unrelated to any governmental function.” That exemption is now codified at KRS 61.878(1)(r).

² In its responses to these appeals, the Department mistakenly assumes that the Appellant is appealing a denial of the records that were mentioned in the letters dated May 11 and May 13, 2022. However, it is clear from the record before this Office that the Appellant is complaining of the Department’s failure to respond to his two letters dated June 13, 2022, in which the Appellant requested copies of the “disposition[s]” of those earlier letters in May. Although the Department does not explicitly state that the “disposition[s]” at issue are part of the Department’s client files,” because the Department claims that its client and case files are exempt, this Office assumes for purposes of these appeals, that the two “disposition[s]” are contained in the Department’s client or case files.

³ KRS 61.880(1) does not limit a public agency’s duty to respond only to requests for “public records,” but instead requires a public agency to respond to “any request for records made under [the Act].” Thus, even if the agency disputes whether the requested records are “public records,” it is obligated to respond within five business days to a request submitted in accordance with KRS 61.872(2) and explain that the request has been denied for failure to describe “public records” to be inspected.

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