



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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**22-ORD-248**

November 18, 2022

In re: Melanie Barker/Cabinet for Health and Family Services

**Summary:** The Cabinet for Health and Family Services (“the Cabinet”) violated the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), when it did not respond to a request to inspect records within five business days of receiving it. The Office cannot consider an appeal filed before the statutory period for an agency to respond to a request expires.

***Open Records Decision***

On August 18, 2022, Melanie Barker (“Appellant”) made a request for a copy of the complaint made against her business in April or May 2022. On October 14, 2022, she made a separate request for records created between 2018 and 2022 showing when state inspectors had visited other businesses based on the similar complaints or “concerns.” Having received no response to either request by October 20, 2022, the Appellant initiated this appeal.

Upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of any such request 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). Here, the Cabinet admits it failed to respond to the August 18 request. Therefore, the Cabinet violated the Act, within the meaning of KRS 61.880(4), when it did not respond to the Appellant’s request within five business days.<sup>1</sup>

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<sup>1</sup> On appeal, the Cabinet has produced the requested record. However, under KRS 61.880(4), “[i]f a 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)] . . . the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

The Appellant also asks this Office to review the Cabinet's alleged failure to respond to her second request. The fifth business day after October 14, 2022, was October 21, 2022. However, the Appellant initiated her appeal on October 20, 2022. Under KRS 61.880(2)(a), "[i]f a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection." Here, the Appellant could not attach the "written response denying inspection" because at the time she initiated this appeal the Cabinet had not denied her request and the statutory deadline to issue a denial or to produce records had not expired. Accordingly, her attempt to appeal the disposition of her second request was premature. *See, e.g.*, 22-ORD-078 (dismissing an appeal brought before the statutory deadline for an agency to respond under KRS 61.880(1) had expired). Therefore, the Appellant's appeal of the Cabinet's alleged failure to respond to her second request is dismissed.<sup>2</sup>

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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

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Distributed to:  
Melanie Barker  
Peyton Sands  
David T. Lovely

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<sup>2</sup> Since the Appellant initiated her appeal on October 20, 2022, she has routinely copied this Office on all her emails to the Cabinet regarding a variety of open records requests she has submitted. However, to seek this Office's review of an agency's disposition of a request to inspect records, a person must strictly comply with KRS 61.880(2). *See, e.g.*, 22-ORD-165. A person does not comply with KRS 61.880(2) by copying the Office on the requests she submits to an agency. If the Appellant is dissatisfied with the Cabinet's responses to her other open records requests, she must strictly comply with KRS 61.880 and provide this Office with a copy of her original request and a copy of the Cabinet's response.