



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**22-ORD-268**

December 15, 2022

In re: Josh Wood/Louisville Metro Government

**Summary:** Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it failed to respond within five business days to three of seven requests it received, and when it invoked KRS 61.872(5) seven times to delay inspection of records, without either notifying the requester of the earliest date on which records would be available or giving a detailed explanation of the cause of the claimed delay.

***Open Records Decision***

Josh Wood (“Appellant”) brings this appeal against Metro regarding seven requests he submitted to inspect records. In all seven requests, he sought records related to various investigations conducted by the Public Integrity Unit (“PIU”), including copies of any associated video footage. On appeal, the Appellant claims Metro failed to respond to some of his requests within five business days. Moreover, when Metro did respond to each of his requests, it invoked KRS 61.872(5) to delay access to the requested video footage. The Appellant claims Metro has subverted the Act, within the meaning of KRS 61.880(4), due to its delay in processing his requests. *See, e.g., 22-ORD-167* (finding Metro subverted the Act in failing to respond timely to multiple requests to inspect records).

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 invoking KRS 61.872(5) to delay access to responsive records must

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. *Id.* However, the Act only permits an agency to delay access “[i]f *the public record* is in active use, in storage or not otherwise available.” *Id.* (emphasis added).

When a person believes a public agency is subverting the intent of the Act, short of denying the person’s request for inspection, that person may appeal to this Office as if his or her request had been denied. KRS 61.880(4) establishes those potential violations, which include “delay past the five (5) day period described in” KRS 61.880(1) and “excessive extensions of time.” As will be discussed below, Metro’s proffered reason for delaying access to requested videos is the result of a large backlog of similar requests to inspect video footage. In other words, Metro’s delay in processing requests for video footage rests more on a lack of resources to review records responsive to numerous requests than the unavailability of the records themselves. As before, the Office is sympathetic to Metro’s situation, but this Office has no discretion to excuse violations of the Act. *See* 22-ORD-167.

For the following reasons, Metro subverted the Act, within the meaning of KRS 61.880(4), seven times in response to the Appellant’s seven requests.

Specifically, the Appellant submitted, and Metro received, request no. 22-5689 on June 9, 2022, but Metro did not issue a written response until six business days later, on June 17, 2022. Because Metro did not issue a written response within five business days, it violated KRS 61.880(1). Moreover, although it provided responsive records and considered the request “closed,” it did not provide copies of the requested video footage. When the Appellant repeatedly asked Metro to respond to his request for video footage, Metro eventually stated on November 11, 2022, “Due to the large volume of pending video requests, please allow up to at least 6 months for [Metro] to prepare and provide these records.” Metro said it would notify the Appellant “[i]f [the video recordings] become available earlier.” This response did not comply with KRS 61.872(5) because it did not provide the Appellant with the earliest date on which the video could be inspected. Instead, Metro stated it would take “up to” six months. Thus, Metro’s failure to respond to the request within five business days and its failure to notify the Appellant of the earliest date on which records would be available constitutes delay past the five-business-day period and an excessive extension of time. *See* KRS 61.880(4); *see also* 22-ORD-167.

The Appellant submitted, and Metro received, request no. 22-5690 on June 9, 2022, but Metro did not issue its written response until over a month later, on July

29, 2022. When it did respond, Metro invoked KRS 61.872(5) and stated that, “due to the large volume of pending video requests, at this time, the requested video is otherwise unavailable. Please allow up to at least 6 months to prepare and provide any records we may possess.” Metro again stated it would provide the requested video recordings to the Appellant, “[i]f they become available earlier.” This response did not comply with KRS 61.872(5) because it did not provide the Appellant with the earliest date on which the video could be inspected. Instead, Metro stated it would take “up to” six months. With respect to the records within the requested PIU file other than video, Metro stated they would be available on or before August 4, 2022. However, Metro did not actually provide those records until more than a month after that, on September 7, 2022. Thus, Metro’s failure to respond to the request within five business days and failure to meet its own deadline to produce records subverted the Act within the meaning of KRS 61.880(4). *See, e.g., 22-ORD-167.*

The Appellant submitted, and Metro received, request no. 22-9919 on October 6, 2022, but Metro did not issue its written response until October 26, 2022, or 14 business days later. When it did respond, Metro stated the “PIU file [the Appellant] requested has been obtained and will need be reviewed and redacted and will be released as [the records] are processed. The audio and video portions of this request will also need to be redacted. Pursuant to KRS 61.872(5) and due to the large volume of pending video requests, please allow up to at least 6 months to prepare these records.” Metro also stated it would notify the Appellant if the audio and video recordings became available earlier than that. Like its disposition of the Appellant’s first request, Metro’s failure to respond to the request within five business days and its failure to notify the Appellant of the earliest date on which records would be available constitute delay past the five-business-day period and an excessive extension of time. *See KRS 61.880(4); see also 22-ORD-167.*

The Appellant submitted, and Metro received, the last four requests—nos. 22-9933, 22-9936, 22-9937, and 22-9950—on October 7, 2022. Unlike the Appellant’s first three requests, Metro did respond to each of these requests within five business days. However, as it did before, Metro advised that, “due to the large volume of pending video requests, at this time, the requested video is otherwise unavailable. Please allow up to at least 6 months to prepare and provide any records we may possess. If they become available earlier,” Metro said, it would notify the Appellant. Metro did not notify the Appellant of “the earliest date” on which the requested records would be available or give a detailed explanation for the cause of delay. KRS 61.872(5). Accordingly, Metro subverted the intent of the Act, within the meaning of

KRS 61.880(4), when it caused an excessive delay in making the requested records available for inspection.

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](mailto:OAGAppeals@ky.gov).

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

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

#426

Distributed to:

Josh Wood  
Alice Lyon  
DeAndrea Baltimore  
Natalie S. Johnson  
Tauheedah El-Saadiq