



COMMONWEALTH OF KENTUCKY  
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**22-ORD-273**

December 19, 2022

In re: Matthew Bunnell/Louisville Metro Government

**Summary:** The Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it failed to issue a timely written response to a request to inspect records. This Office is unable to adjudicate factual disputes between the parties.

***Open Records Decision***

On September 28, 2022, Matthew Bunnell (“Appellant”) submitted a request to Metro for records related to violations of Metro’s Property Maintenance Code and zoning ordinances by property owners on a certain road in Louisville. Metro responded with an automated response indicating the request had been received and assigning it a log number. On November 17, 2022, having received no further response from Metro, the Appellant initiated this appeal.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant or deny the request. KRS 61.880(1). If the agency denies the request, it “shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.* A public agency may delay access to responsive public records beyond the five business days described in KRS 61.880(1) if such records are “in active use, storage, or not otherwise available.” KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must also 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.

Here, Metro issued an automated response within five business days, but its response was deficient. Metro's response failed to indicate whether it would grant the request, deny it, or invoke KRS 61.872(5). Thus, Metro violated the Act.

On appeal, Metro states that "all responsive records have been provided to the [Appellant] as of November 22, 2022." However, the Appellant claims Metro has not provided all responsive records.<sup>1</sup> This Office has routinely stated that it is unable to resolve competing factual claims about whether all responsive records have been provided. *See, e.g.*, 22-ORD-261; 22-ORD-010; 19-ORD-083 (stating this Office cannot "resolve the factual dispute between the parties regarding the disparity between records which have been provided and those sought but not provided"). Accordingly, this Office cannot determine whether Metro violated the Act by possessing but not providing additional records responsive to the Appellant's request.

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

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Distributed to:

Matthew Bunnell  
Natalie Johnson

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<sup>1</sup> As proof, the Appellant submits emails from Metro that he claims relate to properties on the same street and are responsive to his request.