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22-ORD-281

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In re: Tyler Fryman/Lexington Police Department

Summary: The Lexington Police Department (“the Department”) violated the Open Records Act (“the Act”) when it failed to display the email address of its records custodian on its website as required by KRS 61.876(2)(b).

Open Records Decision

On December 7, 2022, Tyler Fryman (“Appellant”) requested records from the Department by sending an email to the Chief of Police. The Department rejected the Appellant’s request on the grounds that “the Lexington-Fayette Urban County Government only accepts email requests for records under the Kentucky Open Records Act via the methods provided in CAO Policy 8R, Section II, paragraph 2, and as detailed on the website located at www.lexingtonky.gov/open-records-request.” This appeal followed.

The Appellant claims the Department has violated KRS 61.876(2), which provides, “Each public agency shall display” certain information “in a prominent location accessible to the public, including on its Web site.” That information includes “[t]he mailing address, *e-mail address*, and phone number of the official custodian of the records or his or her designee to which all requests for public records shall be made.” KRS 61.876(2)(b) (emphasis added).

On appeal, the Department argues it has complied with this requirement because the records custodian’s e-mail address appears on the “Open records request” page of the Lexington-Fayette Urban County Government (“City”) website. The Appellant, however, complains that the correct email address is not prominently displayed on the *Department’s* website and that its directions for submitting a request are “contradictory and inefficient.”

The Department maintains its own webpage, entitled “Police open records,”¹ which contains instructions for submitting requests to the Department in person, by fax, by U.S. Mail, or through an electronic contact form. But that webpage provides no instructions for submitting a request to the Department by email. On the right side of the “Police open records” page, however, is a link titled “Email us,” which directs an email to the Chief of Police. This was the link the Appellant used to submit his request, because it was the only email address provided on the webpage.

According to the Department, any request for police records submitted by email must be directed to the City’s records custodian at an email address other than the Chief of Police’s email address. But the appropriate email address is not displayed on the Department’s website. For that reason, the Department has violated the Act.²

Alternatively, the Department argues it has complied with the requirements of KRS 61.876(2) because the records custodian’s email address appears in the City’s open records rules and regulations adopted under KRS 61.876(1). Although it is true that KRS 61.876(1)(b) requires a public agency’s rules and regulations to include the custodian’s email address, KRS 61.876(2)(b) imposes an additional requirement that the email address be displayed on the agency’s website.³ The City’s compliance with KRS 61.876(1)(b) does not excuse its failure to comply with KRS 61.876(2)(b). Because the Department’s website does not display the records custodian’s email address, as required under KRS 61.876(2)(b), 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 emailed to OAGAppeals@ky.gov.

¹ See <https://www.lexingtonky.gov/police-open-records> (last accessed December 21, 2022).

² To discover the correct email address from the “Police open records” webpage, a user would first have to navigate to an inconspicuous link at the bottom of the webpage titled “Media center.” See <https://www.lexingtonky.gov/media-center> (last accessed December 21, 2022). About halfway down the “Media center” webpage is a link to the City’s open records webpage. See <https://www.lexingtonky.gov/open-records-request> (last accessed December 21, 2022). After navigating to that webpage, which is the City’s webpage, a user could locate the records custodian’s email address. Here, it is unnecessary to determine whether the Department’s records custodian’s email address is “prominently” displayed on its website because it was not posted on the Department’s website at all.

³ Furthermore, KRS 61.876(2)(a) contains a separate requirement that an agency display its open records rules and regulations in a prominent and accessible location, including on its website. Thus, the fact the email address is contained within the rules and regulations promulgated under KRS 61.876(2)(a) is irrelevant to whether such information is itself posted on the website, as is required under KRS 61.876(2)(b).

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s/ James M. Herrick
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Distributed to:

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