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**23-ORD-064**

March 22, 2023

In re: Anne Coorssen/Oldham County Schools

**Summary:** Oldham County Schools (“the District”) did not subvert the intent of the Open Records Act (“the Act”) when it did not respond to a request it did not receive as a result of a technical error that has since been corrected.

***Open Records Decision***

On January 25, 2023, Anne Coorssen (“the Appellant”) emailed to the District’s Superintendent and his secretary the first of four requests to inspect records. She emailed them her second request on February 9, and her third and fourth requests on February 10, 2023. She received no response. She then sent them additional emails asking about the status of her requests, but having received no response to any of her emails, the Appellant initiated this appeal on February 25, 2023.<sup>1</sup>

Upon receiving a request to inspect public records, 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). After the appeal was initiated, the District responded to the Appellant’s requests and provided records responsive to all four of them.<sup>2</sup> However, it claims to have first received the

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<sup>1</sup> The Appellant initiated four separate appeals. However, the Office has consolidated them because the appeals involve the same parties and subject matter. *See, e.g.*, 23-ORD-002; 23-ORD-34.

<sup>2</sup> However, with respect to the Appellant’s request for a “copy of all contracts, agreements, and other documents including but not limited to email correspondence, board enclosures, board minutes and letters to or from the Kentucky School Boards Association regarding the adoption and implementation” of a specific policy, the District provided some responsive emails and claimed no other documents exist because the District “has not engaged in any formal process to adopt” the policy. The Appellant does not challenge the District’s assertion that no additional records exist in response to this request.

Appellant's requests when it received notice of this appeal. The District explains that, upon further review of the Superintendent's and his secretary's email accounts, apparently an anti-phishing tool in the District's email program had blocked the Appellant's emails from reaching the intended recipients.<sup>3</sup> Accordingly, neither the Superintendent nor his secretary ever received the requests.

Because the District has now provided the records responsive to the Appellant's requests, this Office asked the Appellant whether it should consider this appeal moot. *See* 40 KAR 1:030 § 6 ("If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter"). The Appellant argues the appeal is not moot because she believes the District's failure to respond within five business days subverted the intent of the Act. *See* KRS 61.880(4) ("If 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").

This Office previously has found that timely access to public records is an important purpose of the Act, and a public agency's failure to comply with the procedural requirements of the Act constitutes a violation that is not cured by its later production of records. *See e.g.*, 19-ORD-080; 18-ORD-241; 13-ORD-052. If requested records are not exempt from inspection, KRS 61.880(1) requires the public agency to produce them within five business days of its receipt of the request. The types of violations KRS 61.880(4) describes are those inhibiting a requester's statutory right of timely access to records, *i.e.*, they are "short of denial." As such, claims that a public agency has subverted the intent of the Act under KRS 61.880(4) do not become moot simply because the public agency eventually provides the requested records. *See, e.g.*, 18-ORD-241. Accordingly, this appeal is not moot.

Nevertheless, the District did not subvert the intent of the Act's requirements to provide timely access to records. KRS 61.880(1) requires a public agency to respond within five business days of receiving the request. Here, the District did not receive the requests because it did not know the Appellant's emails were blocked by its email program. Because the District has explained why it did not receive the requests, and further explains it has taken corrective action to ensure the Appellant's email address will not be blocked in the future, the Office finds that the District did not subvert the

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<sup>3</sup> Specifically, the Appellant allegedly possesses a District email account. However, she used her personal email account to submit the requests. Because her personal email account was similar to, but not the same as, her District email account, the software automatically presumed the Appellant's personal email account was attempting to spoof the credentials of her District email account in order to send a phishing email. The District has since "whitelisted" the Appellant's personal email address, *i.e.*, registered it as an acceptable email account.

intent of the Act. *See, e.g.*, 23-ORD-026 (finding that an agency did not violate the Act when the email address of its records custodian was temporarily unavailable due to a “technical error”).

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.

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

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

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Distributed to:

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