



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-120

June 2, 2023

In re: Randall Knuckles/Bell County Fiscal Court

Summary: The Bell County Fiscal Court (the “Fiscal Court”) violated the Open Records Act (“the Act”) when it did not properly invoke KRS 61.872(5) to delay inspection of records.

Open Records Decision

On April 13, 2023, Randall Knuckles (“Appellant”) mailed a request to the Fiscal Court asking to inspect documents showing the amount of taxes collected for “Fire & Allied Perils” and a “detailed disbursement” of those funds. On May 2, 2023, the Appellant initiated this appeal, claiming he did not receive a response from the Fiscal Court.

On appeal, the Fiscal Court claims it received the Appellant’s request on April 14, 2023, and issued a response to it on April 19, 2023. As proof, it provides a copy of that response. This Office has routinely found it is unable to resolve factual disputes between a requester and a public agency, such as whether a requester received a response to his request. *See, e.g.*, 23-ORD-062; 22-ORD-024; 21-ORD-233; 21-ORD-163. Accordingly, this Office cannot resolve the dispute between the parties as to whether the Appellant received the Fiscal Court’s April 19 response.¹

¹ After the appeal was initiated, the Fiscal Court provided the requested records to the Appellant on May 5, 2023. It therefore claims the appeal is moot and should be dismissed. *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.”) However, the Appellant brought this appeal because he did not receive any response from the Fiscal Court. Therefore, the appeal is not moot.

Although the Office cannot determine whether the requester received the Fiscal Court's response, the Office can find that the Fiscal Court's response did not comply with the Act. In its April 19 response, the Fiscal Court stated only that "the information [the Appellant has] requested will be ready within 14 business days." 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 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.

Although, the Fiscal Court's April 19 response seemingly granted the Appellant's request, it did not indicate whether the records were "in active use, in storage or not otherwise available," or provide either the earliest date the records would be available or a detailed explanation of the cause for the delay. Thus, the Fiscal Court did not properly invoke KRS 61.872(5), and therefore, it violated the Act.

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Randall Knuckles
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