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23-ORD-125

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In re: Juanisha Jamison/Louisville Metro Police Department

Summary: The Louisville Metro Police Department (“the Department”) violated the Open Records Act (“the Act”) when it failed to explain why it redacted records and when it failed to respond timely to a request to inspect records. The Department also subverted the intent of the Act under KRS 61.880(4) by belatedly invoking KRS 61.872(5) to excessively extend its time to produce records without meeting its burden of proof that additional delay was necessary.

Open Records Decision

On August 11, 2022, Juanisha Jamison (“Appellant”) asked the Department to “release unedited video footage as well [as] names of ALL officers that were involved in the killing of” a named individual on May 20, 2022. In response, the Department provided a redacted version of the video and explained the “[r]edactions appear in protection of personal privacy pursuant to KRS 61.878(1)(a).” The Department did not respond to the Appellant’s request for the names of the officers.

On January 13, 2023, the Appellant requested “the case file in its entirety” for the same incident, including “all transcripts, video, warrants, photos, names of [Department] officers, and the US Deputy Marshal that fired the deadly shots that killed” the decedent. Having received no response to her request by May 8, 2023, the Appellant initiated this appeal to challenge the Department’s disposition of both requests.¹

¹ The Appellant also attempted to appeal the Department’s disposition of a third request, dated August 24, 2022, for “spot shooter data” and names of the officers related to the same incident. To appeal a denial of a request to this Office, a complaining party must “forward to the Attorney General a copy of the written request and a copy of the written response denying inspection.” KRS 61.880(2)(a). Here, the record on appeal does not include a complete copy of the Department’s response to the August

When a public agency denies a request to inspect public records, it must provide “a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). The agency’s explanation must “provide particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013). Here, in its response to the August 11, 2022, request, the Department redacted the requested video under KRS 61.878(1)(a), which exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” This exception requires a “comparative weighing of the antagonistic interests” between an identified privacy interest and the public interest in disclosure of the records. *Ky. Bd. of Exam’rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992). The Department, however, did not articulate a personal privacy interest to be weighed against the public interest. Rather, the Department’s “limited and perfunctory response” merely paraphrased the statutory text of the claimed exemption. *Edmondson*, 926 S.W.2d at 858. Thus, the Department violated KRS 61.880(1) when it failed to explain how KRS 61.878(1)(a) applied to permit its redactions of the video.

On appeal, the Department abandoned its reliance on KRS 61.878(1)(a), and now states that “it will provide [the Appellant] with unredacted footage by August 23, 2023 pursuant to KRS 61.872(5).” Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it. This time may be extended under KRS 61.872(5) when records are “in active use, in storage or not otherwise available,” if the agency gives “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record will be available for inspection.” Here, however, the Department does not claim the records are in active use, in storage, or unavailable. Furthermore, an agency may not impose a lengthy delay under KRS 61.872(5) without explaining why the delay is necessary. *See, e.g.*, 21-ORD-045. The Department’s only explanation for delaying production until August 23, 2023, is that “[t]he video must be reviewed and can only be redacted one item at a time if redactions are necessary.” But this explanation is unacceptable

24, 2022, request, as portions of its response appear to be missing. Accordingly, the Appellant has not perfected her appeal as to that request. Under 40 KAR 1:030 § 1, “[t]he Attorney General shall not consider a complaint that fails to conform [to] KRS 61.880(2), requiring the submission of a written request to the public agency and the public agency’s written denial, if the agency provided a denial.” Regardless, the Department advises on appeal that it will no longer rely on its previously claimed exemptions, and will produce records responsive to her second request on November 9, 2023. While the Office lacks jurisdiction to render a decision with respect to this second request, the Department is advised to consider the remaining portions of this decision with respect to the lengthy delay it claims is necessary to produce records responsive to the Appellant’s August 24, 2022 request.

because the Department has told this Office it will provide the Appellant with “unredacted footage.” Under KRS 61.880(4), a person who “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) or] excessive extensions of time,” may appeal to this Office as if the record had been denied. Here, the Department has subverted the intent of the Act by excessively extending the time by which it will provide responsive records, within the meaning of KRS 61.880(4).

With regard to the Appellant’s request for the names of officers, the Act does not require public agencies to fulfill requests for information, but only requests for identifiable public records. KRS 61.872; *see also Dep’t of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”). Here, the Appellant’s request for the officers’ names was clearly a request for information. Nevertheless, the Department violated the Act when it initially failed to respond at all to that portion of the Appellant’s request within five business days. *See, e.g.*, 20-ORD-075.

Turning to the Appellant’s request dated January 13, 2023, the Department failed to issue any response to that request before this appeal was initiated. The Department asserts “that any delay in responding to [the Appellant’s] requests was due to the volume of the records involved in this case and [its] obligation to review the responsive records before providing them to the requestor.” But an agency’s obligation under KRS 61.880(1) is to decide within five business days whether to grant or deny the request, and to issue a written response within five business days notifying the requester of that decision. This deadline is not altered by the volume of records requested or the need to review them. As previously explained, to the extent a request seeks voluminous records in need of redaction, a public agency may invoke KRS 61.872(5) to delay access to the “not otherwise available” records by stating the earliest date on which records will be available and giving a detailed explanation of the cause of delay. Accordingly, the Department violated the Act by failing to respond in a timely manner.

On appeal, the Department states “the investigation is closed” and it will provide the requested records to the Appellant “by November 9, 2023 pursuant to KRS 61.872(5).”² Once again, however, the Department has improperly and belatedly invoked KRS 61.872(5). The Department again relies on its alleged need to redact the video, despite having told this Office it will provide the video without redaction. The only other explanation the Department offers is that “there are various formats and

² The Department states it will not, however, provide “extraction reports taken from any private individual’s cell phone” due to personal privacy interests implicated under KRS 61.878(1)(a). In her reply to the Department’s response on appeal, the Appellant does not contest the Department’s withholding of these extraction reports.

sizes of records that contribute to the delay.” That is not a “detailed explanation of the cause” for further delay, as is required under KRS 61.872(5). The Appellant submitted her request on January 13, 2023. Because the Department has not explained why a delay of almost 10 months is necessary to comply with the request, it has not met its burden of proof under KRS 61.880(2)(c). *See, e.g.*, 21-ORD-045. Thus, the Department has again subverted the intent of the Act by excessively extending the time by which it will provide responsive records, within the meaning of KRS 61.880(4).

A party aggrieved by this decision may appeal it by initiating an 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.

Daniel Cameron
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s/ James M. Herrick
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