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23-ORD-126

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In re: Latonya Jamison/Louisville Metro Police Department

Summary: The Louisville Metro Police Department (“the Department”) violated the Open Records Act (“the Act”) when it failed to timely respond to an open records request. 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 March 22, 2023, and on April 11, 2023, Latonya Jamison (“Appellant”), as administratrix, requested the Department produce 19 different categories of records related to the shooting of her decedent.¹ The Department acknowledged receipt of the

¹ The Appellant sought: (1) “the entire investigative file”; (2) “all witness interviews”; (3) “all interviews of law enforcement officers”; (4) “all after-action reports”; (5) “all reports that were prepared”; (6) “all photographs taken of the scene,” including photos of the gun a named individual allegedly had in his possession; (7) “all videotape taken of the scene,” including video of the gun a named individual allegedly had in his possession; (8) “all records pertaining to the task force that was assembled to arrest” a named individual on May 20, 2022; (9) “all policies and procedures that applied to” the task force described in request 8; (10) “all training materials related to the apprehension of suspects” that were provided to the task force described in request 8; (11) records identifying members of the task force described in request 8; (12) records setting out the hierarchy of the task force described in request 8; (13) “all threat matrixes that were prepared prior to attempting to arrest” a named individual on May 20, 2022; (14) “all communications amongst the task force” described in request 8; (15) “all communication with the U.S. Marshall [*sic*] Service related to the arrest of” a named individual on May 20, 2022; (16) “all communication with the U.S. Marshall [*sic*] Services [*sic*] related to the shooting of” a named individual on May 20, 2022; (17) “all agreements between [the Department] and the U.S. Marshall [*sic*] Service . . . related to jointly engaging in the apprehension of individuals” that were in effect on May 20, 2022; (18) “all records identifying the relationship between [the Department] and the U.S. Marshall [*sic*] Service as it relates to the apprehension of individuals”; and (19) “all insurance policies that insured the [Department] as of May 20, 2022.”

request on April 12, 2023, but did not otherwise respond. Having received no further response to her request by May 8, 2023, the Appellant initiated this appeal.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny it and explain why. KRS 61.880(1). Or, if responsive records are “in active use, in storage or not otherwise available,” a public agency may delay access to them by stating the earliest date on which they will be available and a detailed explanation of the cause of the delay. KRS 61.872(5). Here, the Department acknowledged it had received the Appellant’s request, but neither granted nor denied it within five business days. Instead, the Department failed to respond to the Appellant’s request until after this appeal was initiated. Therefore, the Department violated the Act when it did not timely respond to the Appellant’s request.

On appeal, the Department states “it will provide [the Appellant] with responsive records by November 9, 2023 pursuant to KRS 61.872(5).” 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 provides two explanations for delaying production until November 9, 2023. First, the Department says, “The video must be reviewed and can only be redacted one item at a time if redactions are necessary.” But the need to review video only applies to one of the 19 categories of requested records. Second, the Department states there are “various formats and sizes of records.” But this is not a “detailed explanation of the cause” as required under KRS 61.872(5). 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). The Appellant submitted her request on March 22, 2023. Because the Department has not explained why a delay of almost eight months is necessary to comply with the request, it has not met its burden of proof under KRS 61.880(2)(c).² *See, e.g., 21-ORD-045.* Thus, 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).

² On appeal, the Department seeks to mitigate the length of its delay by committing to producing records in batches on an ongoing basis as the records become available. This Office has recognized that a public agency can demonstrate good faith that it is not excessively delaying access to voluminous records by producing responsive records in batches up through the date by which the agency claims the records will be available. *See, e.g., 21-ORD-045 n.3.* However, the Department has not stated how often such batches will be produced, and as stated above, its explanation for why such a length delay is even necessary fails to comply with its duty under KRS 61.872(5) to provide a “detailed explanation for the cause . . . for further delay.”

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.

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s/ Zachary M. Zimmerer
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