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23-ORD-143

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In re: Ronald Mitchell/Kentucky Board of Veterinary Examiners

Summary: The Kentucky Board of Veterinary Examiners (the “Board”) violated the Open Records Act (“the Act”) by failing to post on its website rules and regulations for submitting a request to inspect records.

Open Records Decision

On May 10, 2023, Ronald Mitchell (“Appellant”) submitted a request to the Board for audio or video recordings of its meetings on several dates between September 29, 2022, and March 23, 2023. In a timely response, the Board provided a link to a recording of its March 23, 2023 meeting. However, it denied the request for recordings of previous meetings because it had deleted them per “standard operating procedure.” The Appellant replied and asked the Board for a copy of its “rules and regulations” promulgated under KRS 61.876 to support its claim it had appropriately destroyed the recordings. In another timely response, the Board provided links to the statutes and regulations that generally pertain to the Board, the Open Records Request form promulgated by this Office, a copy of the general records retention schedule applicable to all state agencies, and a copy of the records retention schedule specifically applicable to the Board’s records. This appeal followed.

Under KRS 61.876(1), each public agency must adopt “rules and regulations” pertaining to the procedure for requesting inspection of public records. The rules and regulations must contain the agency’s principal office address and its regular office hours; the title, mailing address, and email address of the agency’s official records custodian; the fees charged for copies of records; and the procedure to be followed in requesting public records. *Id.* These rules and regulations must be posted in a

prominent location at the agency's principal office where the public has access, and on its website. KRS 61.876(2).

The rules and regulations required to be adopted under KRS 61.876 are not the rules and regulations governing records retention. Records retention schedules are policies governing the length of time records must be retained and are subject to approval by the Department of Library and Archives. *See, e.g.*, KRS 171.530; KRS 171.680. Records retention schedules do not contain the contact information of an agency's records custodian or the "procedures to be followed in requesting public records." KRS 61.876(1)(d).

On appeal, the Board directs the Office to its website containing various records retention schedules. However, the Board's website does not contain rules and regulations that contain the information required under KRS 61.876(1).¹ Accordingly, the Board violated the Act.²

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

¹ An example of the rules and regulations required to be adopted under KRS 61.876(1) may be found on page 35 of the 2022 version of "The Kentucky Open Records & Open Meetings Acts: A guide for the public and public agencies," available at <https://www.ag.ky.gov/Documents/2022%20-%20Open%20Records%20Open%20Meetings%20Guide.pdf> (last accessed June 22, 2023).

² Underlying his appeal is the Appellant's concern that the Board deletes recordings of its meetings 30 days after the minutes of the meeting are approved at the Board's subsequent meeting. As explained, records retention schedules are the rules and regulations governing the length of time records must be retained. The Board has adopted the general retention schedule applicable to all state agencies, which requires it to delete recordings of meetings 30 days after the minutes are approved at a subsequent meeting. *See* General Schedule for State Agencies, Series M0049, "Recordings of Meetings," available at <https://kdla.ky.gov/records/RetentionSchedules/Documents/State%20Records%20Schedules/kystateagency.pdf> (last accessed June 22, 2023). Accordingly, to the extent the Appellant believes the Board violated the Act by deleting the recordings, he is incorrect.

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s/ Marc Manley
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#216

Distributed to:

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