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23-ORD-156

June 29, 2023

In re: Steve Knipper/Office of the Secretary of State

Summary: The Office of the Secretary of State (the “agency”) 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 24, 2023, Steve Knipper (“Appellant”) emailed a request to the agency to obtain a copy of “any electronic record” that “includes a complete list of all registered LLC entities active as of” the date of the request. In a timely response, the agency stated only that it was “reviewing [his] request to determine whether responsive records exist. [He] will have a response no later than May 30.” This appeal followed.

“If a person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited . . . 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.” KRS 61.880(4). On appeal, the Appellant specifically alleges the agency failed to comply with KRS 61.872(5), and therefore, subverted the intent of the Act by delaying access to records beyond the five business-day period.¹

¹ After the appeal was initiated, the agency provided all responsive records in its possession. However, the appeal is not moot, because the violation about which the Appellant complains is improper delay, which cannot subsequently be corrected by providing responsive documents.

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. Here, the agency stated it would provide a “response” to the Appellant’s request, not records, on May 30, 2023. Thus, it did not state the earliest date on which requested records would be available. Nor did the agency’s response explain why it needed until May 30, 2023, to produce responsive records. Accordingly, the agency subverted the Act, within the meaning of KRS 61.880(4), when it delayed access to records beyond five business days without properly invoking KRS 61.872(5).

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
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s/ Marc Manley
Marc Manley
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Distributed to:

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