



COMMONWEALTH OF KENTUCKY
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23-ORD-194

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In re: Melissa Barlow/Mount Sterling Police Department

Summary: The Mount Sterling Police Department (“the Department”) violated the Open Records Act (“the Act”) when it did not respond to a request to inspect records within five business days of receiving it.

Open Records Decision

On June 15, 2023, Melissa Barlow (“Appellant”) submitted a request to the Department for the name of individuals charged with littering “KKK flyers” on June 10, 2023.¹ After receiving no response from the Department, the Appellant initiated this appeal.

Upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1). Here, the Department has not disputed that it failed to respond to the June 15, 2023 request. Therefore, the Department violated the Act when it did not respond to the Appellant's request within five business days.²

¹ Under KRS 61.872(2), a person submitting an application to inspect public record must describe the records to be inspected. Asking for the identity of a person is a request for information, not a request to inspect public records. Nevertheless, an agency cannot ignore such a request and still must respond to it within five business days even if its response is to deny the request as one seeking information instead of public records.

² After this appeal was initiated, the Department stated the investigation was still ongoing and it has identified the person likely responsible, but no charges had been filed or arrests made as of July 3, 2023.

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.

Daniel Cameron
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s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

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