



COMMONWEALTH OF KENTUCKY
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23-ORD-198

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In re: Tanner Watkins/City of Prospect

Summary: The City of Prospect (“the City”) violated the Open Records Act (“the Act”) when it invoked KRS 61.872(5) to delay access to records without stating the earliest date on which responsive records would be available or giving a detailed explanation for the cause of the delay.

Open Records Decision

On April 25, 2023, Tanner Watkins (“the Appellant”) submitted to the City a request to inspect records that contained 136 subparts.¹ On May 1, 2023, the City informed the Appellant it anticipated possessing records responsive to the request, “however, due to the number of requests it will take significant time to research and organize any such records for [the Appellant’s inspection.” On May 23, 2023, the Appellant allegedly sent an email to the City asking about the status of his request, to which the City allegedly responded that it would send a “follow up letter [in] the next week detailing [its] progress.”² However, as of July 5, 2023, the Appellant had not received any further communications from the City. He then 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 the request and explain why.

¹ Most of the requests sought various types of communications, including emails, texts, and other written communications, sent or received in the last 7 years by any past or present City employee or official related to a variety of specific topics. While the Office holds that the City’s response failed to comply with KRS 61.872(5), the City quite possibly could have denied the request as placing an unreasonable burden on it. However, the City did not deny the Appellant’s request as unreasonably burdensome, and therefore, additional discussion of KRS 61.872(6) is unnecessary.

² The Appellant did not provide the Office a copy of his May 23 email, or the City’s response to it.

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 City did not determine within five business days whether it would grant or deny the request. Instead, it invoked KRS 61.872(5), but did not specify whether the records were “in active use, storage, or not otherwise available.” The City also did not notify the Appellant of the earliest date on which the records would be available. Rather, it explained the delay was due to the volume of requests the Appellant submitted. On July 10, 2023, after the appeal was initiated, the City informed the Appellant its records custodian had already spent 35 hours attempting to retrieve potentially responsive records from former City employees and officials. The City further reported it had located 18 responsive records, but still needed additional time to complete its search. The City still has not provided the earliest date on which the records will be available. Accordingly, the City has failed to comply with KRS 61.872(5), because it has not notified the Appellant of the earliest date on which records will be available.

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.

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s/ Marc Manley
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