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23-ORD-204

August 8, 2023

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”) when it delayed access to records because it is understaffed.

Open Records Decision

On June 21, 2023, Ronald Mitchell (“Appellant”) submitted a request to the Board to inspect “all correspondence and documents generated by either the Board or” thirteen specific veterinarians “who were ordered to appear on September 29, 2022, regarding their failure to comply with [a specific policy], including the correspondence that [was] intended to give notice of dismissal.” On June 27, 2023, the Board responded, invoked KRS 61.872(5), and stated responsive records would be available no later than September 7, 2023, because of its “current workload, backlogs, [the] mandates for new programs[,] . . . and the fact that the board is currently understaffed.” The Appellant then initiated this appeal, claiming the Board’s delay was unreasonable.

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). 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 Board cited KRS 61.872(5) but did not claim the records are in active use, in storage, or unavailable. Instead, it stated it would not provide responsive records until September 7, 2023, because of its “current workload, backlogs, [the] mandates for new programs[,] . . . and the fact that the board is currently understaffed.” However, the fact that an agency is understaffed or busy during a particular time of year does not constitute a proper basis for delaying production of the requested records. *See, e.g.*, 22-ORD-257; 22-ORD-134; 22-ORD-133; 19-ORD-188 n.1. Thus, the Board violated the Act by delaying access to responsive records without properly invoking KRS 61.872(5).¹

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
Attorney General

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

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¹ On appeal, the Board argues the responsive records are more voluminous than the Appellant claims, and it does not have enough staff to carry out all of its functions and to also respond to requests to inspect records. The Board does not, however, quantify or estimate the number of potentially responsive records. *See, e.g.*, 21-ORD-176 (explaining the factors the Office considers when determining whether any delay is reasonable, including most importantly, the number of responsive records). The Board further argues it is now unable to search for responsive records because all of its records became temporarily unavailable beginning on July 12, 2023, when they were put into storage to facilitate movement from one office to another. Although the Board’s records may now be “in storage,” KRS 61.872(5), they did not state that the records were in storage at the time it issued its response on June 27, 2023, when it stated it required more than two months to provide responsive records.

Distributed to:

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