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23-ORD-255

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In re: Kurt Wallace/Louisville Free Public Library

Summary: The Louisville Free Public Library (the “Library”) violated the Open Records Act (“the Act”) when it failed to publish on its website its rules and regulations for submitting a request to inspect public records and the contact information of its official records custodian. The Library also violated the Act when it responded to a request with instructions to use a particular form rather than providing the contact information of its official records custodian to whom the request should be submitted.

Open Records Decision

On June 29, 2023, the Director of the Library sent notice by email to Kurt Wallace (“Appellant”) that he was banned from the Library. In response to the Library’s notice, the Appellant asked for a “courtesy copy” of the incident report that served as the basis for his ban. The Director informed the Appellant he could request the incident report by submitting a request to inspect records using Louisville/Jefferson County Metro Government’s (“Metro”) “NextRequest” system. The Director also provided him a URL link to that website portal.

The next day, the Appellant responded to the Director’s email and stated he was submitting a request to inspect records to the Director specifically as “the presiding officer” of the Library. The Appellant asked to inspect all incident reports, records in the incident file, and all memorandums or communications, including text messages or email communications, between the Director and staff regarding the incident. The Director responded less than ten minutes later and denied the Appellant’s request because the Library “is a department of Louisville Metro Government” and “[a]ll open records requests . . . must be submitted through the

LMG portal” the Director had provided to the Appellant the day before. A few hours later, the Appellant sent another email to the Director,¹ alleging the Library had failed to comply with the Act because it had not posted its rules and regulations for submitting requests to inspect public records on its website, nor had it posted the contact information of the Library’s official records custodian. Having received no further response from the Library by July 28, 2023, the Appellant initiated this appeal.²

The Appellant first alleges the Library violated the Act when it failed to publish on its website its rules and regulations for submitting a request to inspect records, as well as the contact information of its official records custodian. Under KRS 61.876(1), each public agency must adopt “rules and regulations” explaining the procedure for submitting a request to inspect 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 when requesting public records. *Id.* These rules and regulations must be posted in a prominent location at the agency’s principal office and on its website. KRS 61.876(2).

The Library does not dispute that it failed to post the required information on its website before this appeal was initiated. Rather, it now states it “has updated [its] open records policy and it is now posted on [the Library’s] website.” Thus, although the Library was in violation of the Act for failing to publish on its website its rules and regulations, as well as the official custodian’s contact information, it has now corrected that violation.³

The Appellant also argues the Library violated the Act by failing to respond to his request within five business days of receiving it. Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within

¹ The Appellant also copied on the email a Gmail account belonging to the Jefferson County Judge/Executive. In his appeal, the Appellant raises concerns with the Jefferson County Judge/Executive’s alleged use of a Gmail account to conduct government business. Yet he also alleges she never responds to emails sent to that account. The Office declines to address these issues as they are collateral to the Appellant’s appeal of the Library’s disposition of his request. Moreover, as explained in 22-ORD-167, the official records custodian of Metro’s records is appointed by the Mayor, not the Jefferson County Judge/Executive.

² The Appellant also makes several allegations against the Library that are unrelated to the Act. However, the Office is unable to adjudicate such allegations in the context of an appeal brought under KRS 61.880(2)(a) because the Office only has jurisdiction to determine whether the agency has complied with the Act. *See, e.g.*, 23-ORD-218.

³ *See* <https://www.lfpl.org/governance> (last accessed Sept. 19, 2023).

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.” However, “[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.” KRS 61.872(4).

Here, the Appellant submitted a request to the Director of the Library on June 30, 2023, and the Director responded ten minutes later instructing the Appellant to submit his request using Metro’s NextRequest system. The Director did not, however, provide the contact information of the official records custodian for the records requested. Metro’s NextRequest system is not Metro’s official custodian, but rather, it is a website form Metro uses to facilitate requests to inspect records. *See* 22-ORD-167. Moreover, the Act prohibits public agencies from requiring a requester to use a specific form to submit a request. *See* KRS 61.872(2)(c). Thus, although the Library’s response to the Appellant’s request was timely issued within five business days, it failed to comply with KRS 61.872(4) because it did not provide the contact information of the official custodian of the records that had been requested. As such, the Library violated the Act.⁴

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

⁴ After the appeal was initiated, the Library asserts that “all responsive records were provided to [the Appellant] via email as of today, July 24, 2023.” In response to the Library’s assertion, the Appellant states that the “materials supplied were incomplete.” However, the Office is unable to resolve factual disputes, such as whether the records received by the requester are different from those he requested. *See, e.g.*, 23-ORD-050; 22-ORD-246; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81.

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Distributed to:

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