



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

23-ORD-271

October 10, 2023

In re: Saeid Shafizadeh/Jefferson County Property Valuation Administrator

Summary: The Jefferson County Property Valuation Administrator (“the PVA”) violated the Open Records Act (“the Act”) when it denied a request to inspect records without citing an exception authorizing its denial. The PVA also violated the Act when it failed to notify the requester it was not the proper agency for portions of the request and provide the contact information of the correct agency.

Open Records Decision

Saeid Shafizadeh (“Appellant”) submitted a request to the PVA seeking copies of the “[c]omplete personnel files” of two employees.¹ In a timely response, the PVA stated only that it “do[es] not disclose personnel information.” The Appellant then initiated this appeal, claiming the PVA subverted the intent of the Act in several ways.

On appeal, the PVA now claims it provided all responsive records and the appeal should be considered moot.² However, the Appellant disputes whether all

¹ The Appellant also sought other records, but the PVA notified him that the Jefferson County Clerk was the proper agency to which he should submit those portions of his request. The Appellant does not challenge the PVA’s response to those portions of his request.

² The Appellant also claims the PVA’s records custodian, who allegedly is not a licensed attorney, has engaged in the unauthorized practice of law by responding to the Office’s notice of appeal and arguing the appeal is moot. To the extent the Appellant asks the Office to strike the PVA’s response because it was not submitted by a licensed attorney, the Office declines to do so. To the extent the Appellant asks the Office to find that the records custodian engaged in the unauthorized practice of law, the Office declines to decide that question because it does not have jurisdiction, in the context of

responsive records were provided and argues the appeal is not moot. Moreover, the PVA now states responsive records that were created before 2020 “were maintained by the Finance and Administration Cabinet” and it provides the contact information for the official records custodian of that agency. The Appellant, therefore, now wishes to assert a new claim of subversion because the PVA did not inform him originally that it was not the custodian of responsive records predating 2020. Under 40 KAR 1:030 § 6, “If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.” Here, the parties dispute whether all responsive records have been provided. Further, the PVA’s response on appeal indicates additional responsive records do exist, but it does not possess them. As such, the Office cannot find that “the requested documents” were provided to the Appellant such that the appeal can be rendered moot under 40 KAR 1:030 § 6.

Regarding the merits of the Appellant’s appeal, the PVA’s initial response violated the Act. When an agency receives a request under the Act, it “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). If an agency denies in whole or in part the inspection of any record, its response must include “a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.* Moreover, “[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).

Simply put, a public agency’s response denying a request cannot be “limited and perfunctory.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). Here, the PVA stated only that it “do[es] not disclose personnel information.” The PVA cited no exception to the Act in support of its denial or explain how any exception applied to the records it withheld. Nor did it notify the Appellant that it was not the official custodian of records for some of the records requested. Therefore, the PVA’s “limited and perfunctory” response violated the Act. *Id.*

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

an appeal brought under KRS 61.880(2), to decide ancillary questions of law. *See, e.g.*, 23-ORD-218; 23-ORD-166 n.2; 23-ORD-048 n.1; 22-ORD-244 n.3.

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/ Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Saeid Shafizadeh
Natalie Johnson
Ashley Tinius