



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-274

October 18, 2023

In re: J. Brooken Smith/Louisville/Jefferson County Metro Government

Summary: The Louisville/Jefferson County Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it failed to issue a response to a request within five business days of receiving it.

Open Records Decision

On August 28, 2023, J. Brooken Smith (“Appellant”) submitted a request to Metro through its online portal to inspect five categories of records in its possession related to funds obtained and distributed pursuant to the American Rescue Plan. Metro’s online portal indicated the Appellant’s request was received on August 28, 2023. On September 20, 2023, having received no further response from Metro, the Appellant initiated this appeal.

Under KRS 61.880(1), 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.” Here, Metro received the Appellant’s original request on August 28, 2023, but did not respond to it until after this appeal was initiated. Thus, Metro violated the Act.¹

¹ After the appeal was initiated, Metro provided responsive records to the Appellant and asked the Office to consider the appeal moot. *See* 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.”). However, the Appellant objects to the appeal being considered moot because he specifically sought the Office’s review under KRS 61.800(4) and claimed Metro’s failure to respond within five business days subverted the Act by causing “delay past the five (5) day period described in” KRS 61.880(1). Accordingly, the appeal is not moot. *See, e.g.*, 23-ORD-007.

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

#412

Distributed to:

J. Brooken Smith
Alice Lyon
Nicole Pang
Natalie S. Johnson
Annale Taylor