



COMMONWEALTH OF KENTUCKY
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23-ORD-292

November 1, 2023

In re: Saeid Shafizadeh/Louisville Metro Government

Summary: The Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it did not respond to a request to inspect records. Metro 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

On September 12, 2023, Saeid Shafizadeh (“Appellant”) submitted a request to Metro seeking copies of the “[c]omplete personnel files” of two members of the Jefferson County Board of Assessment Appeals and “[r]ecords of inspections conducted by the members of” the board. Having received no response to his request by October 5, 2023, the Appellant initiated this appeal.

On appeal, Metro now claims it provided all responsive records to the Appellant and the appeal should be considered moot. However, the Appellant disputes whether all responsive records were provided and argues the appeal is not moot. Moreover, Metro states it provided the “personnel files” of the two board members and provided the contact information for the official records custodian of the “records of inspections.” The Appellant, therefore, now claims Metro subverted the intent of the Act because it did not inform him originally that it was not the custodian of “records of inspections.”

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, Metro'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, Metro's initial failure to respond to his request violated the Act. 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." 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).

Here, the Appellant claims to have submitted a request on September 12, but not to have received a response until after he initiated this appeal. Metro carries the burden of sustaining its actions, KRS 61.880(2)(c), but it has not disputed the Appellant's claim or otherwise explained why it failed to respond to the request within five business days. Nor did it notify the Appellant that it was not the official custodian of records for some of the records the Appellant requested. Thus, Metro violated the Act when it failed to respond to the Appellant's request within five business days.

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
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s/ Zachary M. Zimmerer
Zachary M. Zimmerer
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Distributed to:

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