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23-ORD-300

November 6, 2023

In re: Tatiana Rose/Bluegrass Area Development District

Summary: The Bluegrass Area Development District (“the District”) violated the Open Records Act (“the Act”) when it failed to respond to a request to inspect records within five business days.

Open Records Decision

On September 11, 2023, Tatiana Rose (“Appellant”) emailed a request to the District to inspect “all nonexempt records regarding [the District’s] coordination of HCBW PDS.”¹ The Appellant also sought a copy of the District’s “[p]olicy on selecting individuals for HCBW PDS coordination.”² The Appellant emailed her request to “info@bgadd.org,” which appears to be the only email address on the District’s website at which a person can submit requests to the District.³ When the Appellant did not receive a response to her request as of October 10, 2023, she initiated this appeal.

¹ Although it is not clear from the face of the request, it appears “HCBW PDS” refers to Home and Community Based waivers that are available to Medicaid recipients through Participant Directed Services.

² The Appellant also submitted requests for information, such as the “number of individuals that were accepted to receive HCBW PDS coordination” from the District and the “number of individuals on any waiting list” for such “coordination” from the District. However, the Act allows residents of the Commonwealth to inspect describable public records, KRS 61.872(2), not to submit requests for information. The Office has previously found that a request seeking “the number” of something is a request for information to which the Act does not apply. *See, e.g.*, 21-ORD-014; 21-ORD-046. Nevertheless, after the District received notice of this appeal, it provided the Appellant with the requested statistical information.

³ While the Office notes the District’s website contains a directory, including email addresses, for all its employees, none of those employees have the title of “official custodian of records” or anything similar. *See* <https://bgadd.org/staff/> (last accessed November 6, 2023).

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). On appeal, the District does not claim to have not received the Appellant's request. Rather, it advised that the "IT Director" monitoring the email account to which the Appellant submitted her request had separated from the District on August 25, 2023, and no employee had been monitoring the email account since then. After receiving notice of this appeal, the District provided the Appellant with a copy of the requested policy, but asked her to describe more fully the records she sought with respect to her request for "all nonexempt records regarding [the District's] coordination of HCBW PDS."⁴

The Office has previously found that the absence of an agency's official custodian does not extend the agency's deadline to respond to a request it has received. *See, e.g.*, 16-ORD-279. Thus, assuming "info@bgadd.org" is the email address for the District's official custodian of records, then the District's failure to respond to the request within five business days is not excused because there is no longer an employee monitoring that email account.⁵ The District therefore violated the Act.

The Office further notes that the Act requires every public agency to post on its website the contact information, including an email address, for its official custodian of records. *See* KRS 61.876(2)(b). That email address is the address to which requests to inspect records may be submitted by email under KRS 61.872(2)(b)4. If the email address listed on its website is not the proper email address for residents of the Commonwealth to submit requests to inspect public records, then the District also has violated the Act by failing to post on its website the email address of its official records custodian. The District's failure to respond to the Appellant's request in five business days therefore cannot be excused by the Appellant's not sending her request to the proper email address.

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

⁴ The Office agrees that this portion of the Appellant's request, as currently framed, is an "any-and-all records" type of request about an ill-defined topic that lacks sufficient specificity to enable a reasonable person to ascertain the scope of the request. *See, e.g.*, 20-ORD-025; 13-ORD-077.

⁵ The District states on appeal it has now assigned a new employee to monitor this email account.

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:

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