



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-304

November 14, 2023

In re: Eric Cook/City of Ashland

Summary: The City of Ashland (“the City”) did not violate the Open Records Act (“the Act”) when it asked its employees to search their emails for responsive records.

Open Records Decision

On October 4, 2023, City employee Eric Cook (“Appellant”) requested copies of two categories of electronic records. First, he requested “[a]ll emails to/from” six City employees “dating back to 1/1/23 having anything to do with work related projects.” Secondly, for the same time period, he requested “[a]ny emails to [sic] which” one of the named employees “is mentioned and copied on.” In a timely response, the City denied both requests under KRS 61.872(6) as “unduly burdensome” and likely to disrupt the essential functions of City employees. This appeal followed.

On appeal, the Appellant has clarified that his first request was not meant to include work-related emails of any of the six named employees, but only work-related emails “that include all of those employees on one email thread.” In light of that clarification, the City has conducted a search and located only one responsive email thread, which it has agreed to provide to the Appellant. Accordingly, any dispute regarding the first category of records the Appellant requested is moot.¹

As to the second request, if a request for records “places an unreasonable burden in producing public records[,] the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.” KRS 61.872(6). The City denied the Appellant’s request as unreasonably burdensome because it “would have

¹ “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.” 40 KAR 1:030 § 6.

to have all of its hundreds of employees with email access search through all their email correspondence for a period of almost ten months to determine which, if any, emails mention [a particular employee] and which, if any, were copied to her,” which “would require hundreds of man hours of city employees to be devoted to this task.” On appeal, the Appellant now “agree[s] that it is unduly burdensome” because he “worded that Request wrong.” Because the Appellant concedes the request as submitted was unduly burdensome, the Office considers this portion of the appeal withdrawn and declines to determine whether the City violated the Act when it denied the request under KRS 61.872(6).

The Appellant, however, claims it is improper “that the employees [he is] requesting these emails from are the ones that would be searching for them.” He expresses concern that those employees will delete the responsive emails instead of providing them to the records custodian. However, the applicable records retention schedule requires routine correspondence to be retained for two years.² Under KRS 171.710, local agencies must establish “safeguards against removal or loss of records,” including “making it known to all officials and employees of the agency that no records are to be alienated or destroyed except in accordance with law, and calling their attention to the penalties provided by law for the unlawful removal or destruction of records.” The Office cannot presume that local government employees will destroy records in violation of law. Moreover, it is only reasonable to assume that the employees in possession of responsive emails would be in the best position to search for them. Accordingly, the City did not act improperly when it directed its employees to search their email accounts for records responsive to the Appellant’s request.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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.

² See Local Governments, General Records Retention Schedule, “Routine Correspondence,” Series L4955, *available at* <https://kdla.ky.gov/records/RetentionSchedules/Documents/Local%20Records%20Schedules/LocalGovernmentGeneralRecordsRetentionSchedule.pdf> (last accessed Nov. 14, 2023).

**Daniel Cameron
Attorney General**

s/ James M. Herrick
James M. Herrick
Assistant Attorney General

#461

Distribution:

Mr. Eric Cook
James H. Moore, III, Esq.
Hon. Matt Perkins
Susan Maddix, Clerk