



COMMONWEALTH OF KENTUCKY  
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**23-ORD-311**

November 20, 2023

In re: Richard Jones/Kentucky State Police

**Summary:** The Kentucky State Police (“KSP”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), by delaying access to requested records beyond five business days from receipt of the request.

***Open Records Decision***

On October 16, 2023, Richard Jones (“Appellant”) submitted four requests to KSP for copies of the emails of three KSP employees and one Justice and Public Safety Cabinet (“Cabinet”) employee discussing the recent appointment of a Public Safety Telecommunications Manager for KSP Post 5. The Appellant specified the subject matter of his request included emails “that may involve [the Appellant] and any other conversations . . . conducted with anyone about this position and the recent job appointment,” including “conversations with the interview pannel [*sic*].” He also narrowed the scope of his request to responsive emails sent or received by KSP employees since June 1, 2023, and those received from the Cabinet employee since September 12, 2023.<sup>1</sup> In a timely response, KSP stated it had “asked the Commonwealth Office of Technology (“COT”) to run searches” for the emails but had “not received the results of those searches by COT yet.” Citing KRS 61.872(5), KSP claimed it needed “additional time in which to receive the search results from COT, review those results to determine responsiveness, and then perform necessary redactions, if any, prior to disclosure.” KSP stated it “anticipate[d] being able to gather these records and finish the necessary review and redaction process on or before November 29, 2023.” This appeal followed.

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<sup>1</sup> The Cabinet is a public agency separate from KSP, and therefore, KSP is not the official custodian of records belonging to the Cabinet. Nevertheless, while KSP is unable to search the Cabinet employee’s email account, it could search the email accounts of its own employees who received emails from the Cabinet employee.

Under KRS 61.880(4), a person may petition the Attorney General to review an agency's action if the "person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including . . . delay past the five (5) day period described in" KRS 61.880(1). That statute requires a public agency to grant or deny a request for records within five business days of receiving it, unless the agency properly invokes KRS 61.872(5) to delay inspection of records that are "in active use, in storage or not otherwise available." When a public agency delays inspection of records under KRS 61.872(5), it must also give "a detailed explanation of the cause" for the delay and notify the requester of the "earliest date on which [records] will be available for inspection."

Here, KSP invoked KRS 61.872(5) but provided only a speculative date when it "anticipate[d]" the records would be available. Moreover, KSP did not claim the records were in active use, in storage, or not otherwise available. Although KSP explained it was waiting for COT to search for the records, it has not established why it was necessary to outsource this search to COT. When a public agency receives a request for emails, it must make a good-faith search for the responsive emails in its possession. *See, e.g.*, 18-ORD-219. A good-faith search for emails is conducted by searching the email accounts of the agency employees identified in the request. *See, e.g.*, 20-ORD-094. Presumably, the three KSP employees still have access to their own email accounts and are capable of performing the search themselves, and the members of the KSP interview committee are capable of searching their own email accounts for relevant communications with the Cabinet employee. It is reasonable to expect agency employees to perform this search themselves. *See, e.g.*, 23-ORD-304.

At all times, a public agency must substantiate the need for any delay and that it is acting in good faith. *See* KRS 61.880(2)(c) (placing the burden on the public agency to substantiate its actions); *see also* 21-ORD-211; 21-ORD-045. Here, KSP faults COT for the delay but does not explain why it needs COT to perform the search on its behalf. COT is not the custodian of electronic records belonging to other state agencies. *See* 19-ORD-091. Because KSP has not provided a "detailed explanation" for the necessity to outsource its search to a different agency, KSP has not met its burden of establishing that the records were "in active use, storage or not otherwise available" or that delaying access to the records by more than a month was necessary in this case. Because it has not substantiated the reasonableness of its delay, the Office finds KSP subverted the intent of the Act, within the meaning of KRS 61.880(4), by delaying access to records past the five-day period described in KRS 61.880(1).

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.

**Daniel Cameron**  
**Attorney General**

s/ James M. Herrick  
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