



COMMONWEALTH OF KENTUCKY
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23-ORD-333

December 14, 2023

In re: Mike Doyle/Louisville Metro Government

Summary: Louisville Metro Government (“Metro”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), by delaying its final response beyond the five-day period under KRS 61.880(1) without invoking KRS 61.872(5), explaining the cause for delay, or providing the earliest date when the records would be available.

Open Records Decision

On October 30, 2023, Mike Doyle (“Appellant”) submitted a request, containing 13 subparts, seeking records related to the sale and purchase of a specific property. On November 6, 2023, Metro responded and stated it had “provided the attached records,” noting that phone numbers had been redacted from the records under KRS 61.878(1)(a). However, Metro’s response did not otherwise specify to which subpart of the Appellant’s request the provided records were responsive. The Appellant then told Metro that the provided records were not responsive to several subparts of his request. Subsequently, on November 13, 2023, the Appellant initiated this appeal.

On November 14, 2023, the day after the Appeal was initiated, Metro provided a supplemental response to the Appellant that responded to nine of the 13 subparts of the Appellant’s request. Metro’s supplemental response provided additional responsive records, directed the Appellant to previously produced records, and advised that it would “provide a response for items 2, 3, 7, and 11 once departments have responded and any responsive records have been reviewed.” On November 30, 2023, Metro issued its final response addressing the remaining subparts of the

request. This response informed the Appellant that additional records responsive to three subparts of his request did not exist, and that Metro would be withholding “one internal email discussing real estate prices” under KRS 61.878(1)(j).¹

Under KRS 61.880(1), a public agency must decide within five business days of receiving a request to inspect records whether to grant or deny it. This time may be extended under KRS 61.872(5) if the requested records are “in active use, in storage or not otherwise available,” but only if the agency provides “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record will be available for inspection.” An agency may not impose a lengthy delay under KRS 61.872(5) without explaining why the delay is necessary. *See, e.g.*, 21-ORD-045.

On November 29, 2023, in its appeal response, Metro stated for the first time that the request involves “multiple departments, archived records, [and] records in active use.” It further stated that the records would be provided by “a date certain of December 13,” which statement Metro said was “to correct the omission under KRS 61.872(5).” Thus, although it appears Metro attempted to remedy the deficiency of its initial response, the agency now concedes it did not properly invoke KRS 61.872(5) at the outset, by failing to explain the cause for further delay or provide the earliest date by which additional records responsive to the request would be available for inspection.

Under KRS 61.880(4), a person who “feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . delay past the five (5) day period described in” KRS 61.880(1), may appeal to this Office as if the request had been denied. Here, Metro did not cite KRS 61.872(5) or otherwise explain the reasons for its delay until after the five-day period had passed. Although Metro provided a date by which the Appellant could expect a final response on November 29, it has not explained why it took over three weeks to communicate

¹ On December 6, 2023, just eight days before the Office’s statutory deadline to issue its decision in this appeal, the Appellant objected to Metro withholding this email under KRS 61.878(1)(j). Under KRS 61.880(2)(a), this Office’s mandate is to review the request for records and the agency’s response to determine whether the agency violated the Act. In finding that Metro’s response failed to comply with KRS 61.880(1), the Office has carried out its mandate. The Office declines to consider the new issues raised on appeal regarding Metro’s withholding of its “internal email.” *See, e.g.*, 22-ORD-200 n.2; 22-ORD-170 n.2; 22-ORD-142 n.3; 21-ORD-177 (the Office may decline to consider new issues raised by the parties’ subsequent correspondence on appeal because such matters encroach upon the Office’s statutory deadline to issue a decision within 20 business days and suffer from incomplete briefing by the parties). Rather, now that Metro has issued its final response and denied inspection of the “internal email” under KRS 61.878(1)(j), the Appellant may initiate this Office’s review of any newly alleged violations by initiating a new appeal. He may do so by providing the Office a copy of his original request and the agency’s final response. *See* KRS 61.880(2)(a).

that date to the Appellant. Accordingly, Metro subverted the intent of the Act by delay within the meaning of KRS 61.880(4).

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/ Zachary M. Zimmerer
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Assistant Attorney General

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Distributed to:

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