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23-ORD-334

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 giving the earliest date when records would be available.

Open Records Decision

On November 1, 2023, Mike Doyle (“Appellant”) submitted a request to Metro for copies of five categories of records related to Metro Parks, Jefferson Memorial Forest, and Wilderness Foundation (collectively, “the entities”). Specifically, he requested “all regulations and statu[t]es regulating” the entities, “all regulations in regard to real estate acquisitions or sales for” the entities, “5 previous Annual budgets for” the entities, “annual budgets for 5 previous years for real estate acquisitions for” the entities, and “any acquisitions by [the entities] with addresses and purchase prices within the past 5 years.” Five business days later, on November 8, 2023, Metro responded to the request and provided hyperlinks to websites containing “regulations relating to all properties when permits are needed,” which the Appellant had not requested; city budgets for 2022 and 2024; Metro ordinances for parks; and Metro’s collected ordinances. Metro further informed the Appellant his request was “still being processe[d]” and “additional records will be provided when they are made available.” This appeal followed.

Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it. This time may be extended under KRS 61.872(5) when records are “in active use, in storage or not otherwise available,” if the agency gives “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. Here, however, Metro did not invoke KRS 61.872(5) at all, nor did it explain the cause for further delay or give the earliest date when the “additional records” would be available.

On November 28, 2023, approximately two weeks after the Appellant initiated this appeal, Metro issued its final response to the request. It characterized the requests for regulations and statutes as “a request for information, rather than a request for identifiable records” maintained by Metro, but provided a copy of “a policy, rather than a regulation, regarding property it owns.” With regard to the requests for annual budgets, Metro provided “5 years of full Parks budget documents,” including budget items for Jefferson Memorial Forest and property acquisitions.¹ Metro also noted “the Wilderness Foundation is [a] private non-profit corporation,” not controlled by Metro, which raises its own funds.

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 issued its final response eleven business days after the statutory deadline and only after receiving notice of this appeal. Furthermore, Metro has not attempted to explain why it took an additional two weeks to provide one policy and five budget documents and deny the remainder of the request. 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 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
James M. Herrick
Assistant Attorney General

¹ Regarding the Appellant’s final request for property acquisitions, Metro provided a response, but that response is not fully reproduced in the record on appeal.

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Distributed to:

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