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23-ORD-343

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In re: Anne Coorssen/Oldham County Schools

Summary: Oldham County Schools ("the District") violated the Open Records Act ("the Act") when it invoked KRS 61.872(5) to delay access to records without providing a detailed explanation for the cause of the delay. But the District's delay in producing records within 10 business days of receiving the request was not unreasonable. The District also violated the Act when it denied a request as unreasonably burdensome without substantiating the denial with clear and convincing evidence.

Open Records Decision

On October 3, 2023, Anne Coorssen ("the Appellant") submitted a request to the District for copies of: (1) all requests to inspect records submitted to the District from September 1, 2022, to the present, and the District's responses thereto, in which the Appellant was referenced; (2) "[a]ll open records requests made in 2021-2022 and 2020-2021, including but not limited to those that were responded to via email by the general counsel. In lieu of the actual requests and responses, a list similar to the list included on the September 25, 2023 board agenda is acceptable"; and (3) "[a]ll training presentations, slide decks, papers, and presentations prepared by [the Appellant] between July 1, 2018 and September 2, 2022."

In a timely response, on October 10, 2023, the District stated the records responsive to the Appellant's first two requests would not be available until October 31, 2023 "[d]ue to the breadth" of the requests. The District further stated the "responsive documents involved are not stored in such a way that can be individually reviewed for any information within each document that would be exempt under the Open Records Act or other relevant law and produced in the electronic format, as requested, within the five-day statutory period." The District also denied the Appellant's third request because she did not "precisely describe" the records sought,

KRS 61.872(3)(b), and it was unreasonably burdensome to search for the requested records, KRS 61.872(6).

The next day, the Appellant replied to object to the District's delay. She stated the District had already prepared a list, and shared it publicly, which identified the requests it had received that referred to her. Accordingly, she believed responsive records should be readily accessible. With respect to her second request, she noted, based on data the District had published, that it had only received 16 requests to inspect records during the two-year period. Moreover, because the Appellant was formerly the District's general counsel and was the individual who had responded to those requests, she advised the District where the responsive records were stored electronically. Similarly, because of her prior experience as general counsel, she advised the District where to search for records responsive to her third request.

In response, the District told the Appellant that records responsive to her first and second requests would be available "by the end of the week." However, it continued to deny the Appellant's third request on the grounds she had failed to precisely describe the records sought. On October 15, the District attempted to email the records responsive to the Appellant's first and second requests, but did not attach them to the email. The District then emailed the responsive records the morning of October 17, after the Appellant had already submitted her appeal.

On appeal, the Appellant claims the District failed to properly invoke KRS 61.872(5) to delay access to records, and its delay in providing them was unreasonable. She also claims the District violated the Act by denying her third request as unreasonably burdensome.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). A public agency may also delay access to responsive records if such records are "in active use, storage, or not otherwise available." KRS 61.872(5). A public agency invoking KRS 61.872(5) to delay access to responsive records must notify the requester of the earliest date on which the records will be available and provide a detailed explanation for the cause of the delay. *Id*. Here, the District's initial response failed to provide a detailed explanation why it could not provide records responsive to the Appellant's first and second requests until October 31. It stated only that the records were "not stored in such a way" to facilitate review of exempt information and produce them in the requested electronic format. The District did not quantify or estimate the number of records implicated, or explain how they were stored such that it could not conduct its review. Accordingly, the District's response failed to provide the "detailed explanation" required under KRS 61.872(5). Nevertheless, the District ultimately produced the records within 10 business days. This relatively brief delay was not unreasonable.

On appeal, the District continues to deny the Appellant's third request because it claims the Appellant has failed to "precisely describe" the records she seeks, and therefore, the request places an unreasonable burden on the District. When a person seeks to inspect public records by receiving copies in the mail, he or she must "precisely describe" the records to be inspected. KRS 61.872(3)(b). A public agency may deny a request to inspect records under KRS 61.872(6) "[i]f the application places an unreasonable burden in producing public records" on the agency. However, an agency denying a request under KRS 61.872(6) must support its denial with "clear and convincing evidence." *Id*. When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction. *See, e.g.*, 97-ORD-088 (finding that a request implicating thousands of physical files pertaining to nursing facilities was unreasonably burdensome, where the files were maintained in physical form in several locations throughout the state, and each file was subject to confidentiality provisions under state and federal law). In addition to these factors, the Office has found that a public agency may demonstrate an unreasonable burden if it does not catalogue its records in a manner that will permit it to query keywords mentioned in the request. *See, e.g.*, 96-ORD-042 (finding that it would place an unreasonable burden on the agency to manually review thousands of files for the requested keyword to determine whether such records were responsive). When a request does not "precisely describe" the records to be inspected, KRS 61.872(3)(b), chances are higher that the agency is incapable of searching its records using the broad and ill-defined keywords used in the request.

Here, the Appellant's third request precisely described the records she sought: all "training presentations, slide decks, papers, and presentations prepared by [the Appellant as general counsel] between July 1, 2018, and September 2, 2022." Aside from the somewhat vague category of "papers," the request specified the types of records sought, the person who created them, and the period in which they were created. Moreover, after receiving the District's denial, the Appellant went further and explained precisely where the District could locate the requested records. It is difficult to imagine how much more precise the Appellant could have been. The District has not quantified or estimated the number of records the request implicates, and only asserts generally that some records may contain privileged attorney-client communications. Accordingly, the District has not proved by clear and convincing evidence that the Appellant's request is unreasonably burdensome.

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
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s/ Marc Manley
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Distribution:

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