



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-346

December 28, 2023

In re: Nicolas Horne/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), when it delayed access to records for six months without proper justification.

Open Records Decision

Nicolas Horne (“Appellant”) submitted a request to inspect “the body cam and dash cam video of any officers responding to” a specific automobile accident on November 6, 2023. In response, Metro cited KRS 61.872(5) and stated that because of “the large volume of pending video requests . . . the requested video is otherwise unavailable” and informed the Appellant that the records would be made available in six months, on May 20, 2024. The Appellant then initiated this appeal, claiming Metro has subverted the Act, within the meaning of KRS 61.880(4), due to its delay in processing his request.

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.* However, the Act only permits an agency to delay access “[i]f *the public record* is in active use, in storage or not otherwise available.” *Id.* (emphasis added).

If a person believes a public agency is subverting the intent of the Act, short of denying the person's request for inspection, he or she may appeal to this Office as if his or her request had been denied. KRS 61.880(4) establishes those potential violations, which include "delay past the five (5) day period described in" KRS 61.880(1) and "excessive extensions of time." Metro's proffered reason for delaying access to the requested video is its large backlog of other requests to inspect other video footage. It explains on appeal that every minute of video requires approximately seven minutes to review and redact exempt information, and it currently has a backlog of 1,325 requests for videos. However, Metro has not stated why this particular video would take six months to review for exempt information and produce the nonexempt portions. Rather, it admits that some requests can be processed in as little as 30 minutes while others may take several weeks. It has not stated that any one request for videos takes six months to review and redact. In other words, Metro's delay in processing requests for video footage rests more on a lack of resources to review records responsive to numerous requests than the unavailability of the records themselves.

As before, the Office is sympathetic to Metro's situation, but this Office has no discretion to excuse Metro from the Act's requirements due to its apparent lack of resources. *See, e.g.*, 23-ORD-328 (finding Metro subverted the Act by delaying access to videos for six months because of its current backlog in processing requests for video); *see also* 22-ORD-167 (finding Metro's lack of resources to process requests does not excuse it from the Act's requirements). Accordingly, Metro subverted the intent of the Act, within the meaning of KRS 61.880(4), when it delayed access to the requested video for six months without proper justification.

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
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Nicolas Horne

Alice Lyon

Annale Taylor

Natalie S. Johnson

Nicole Pang