



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

23-ORD-039

February 20, 2024

In re: Matthew DeMarcus/City of Olive Hill

Summary: The City of Olive Hill (“the City”) violated the Open Records Act (“the Act”) when it failed to respond to a request for records within five business days.

Open Records Decision

On December 29, 2023, Matthew DeMarcus (“Appellant”) emailed a request to the City Clerk to inspect “[a]ll contracts, agreements, communications, recordings, emails, letters, documents, exhibits, plans, drawings, invoices, statements, work orders and papers entered or exchanged by the [City] with Trane Technologies or related entities” related to activities conducted at two specific locations. After receiving an automatic reply stating the City Clerk was on indefinite medical leave, the Appellant sent a copy of the request to the Assistant City Clerk on January 2, 2024. On January 4, 2024, the Assistant City Clerk advised the Appellant she had forwarded the request to the City Attorney “to get advised on this.” Having received no further response to his request by January 30, 2024, the Appellant initiated this appeal.

On appeal, the City admits it “did not respond to the formal request” for records but states the Assistant City Clerk “is a part-time employee tasked with performing her own job duties as well as covering for” the City Clerk in her absence, so “[a]ny delay in providing documents is a result [of] diminished manpower.” The City indicates it will issue a response and is communicating with the Appellant regarding inspection of the requested records.

Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it, and notify the requester in writing of its decision. 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.” To invoke that provision, however, the

agency must “immediately notify the applicant.” *Id.* Here, the City has not invoked KRS 61.872(5), nor has it otherwise responded to the Appellant’s December 29 request. Further, concerns regarding staff workload are an insufficient justification for delay in responding to a request under the Act. *See, e.g., 22-ORD-167.* A public agency must “make proper provision for the uninterrupted processing of open records requests” by having “an individual available to timely process” those requests. 04-ORD-008. The fact that the acting custodian of records has other important duties does not affect the City’s obligations under the Act. *See, e.g., 17-ORD-128.* Accordingly, the City violated the Act when it failed to respond to the Appellant’s request within five business days.

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.

Russell Coleman
Attorney General

/s/ James M. Herrick
James M. Herrick
Assistant Attorney General

#37

Distributed to:

Matthew B. DeMarcus, Esq.
Derrick E. Willis, Esq.
Hon. Jerry Callihan
Ms. Jackie Logan