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24-ORD-058

March 8, 2024

In re: Sarah Little/Oldham County Board of Education

**Summary:** The Oldham County Board of Education (the “Board”) did not violate the Open Records Act (“the Act”) when it issued a response within five days, excluding Saturdays, Sundays, and legal holidays, of receiving a request to inspect records.

***Open Records Decision***

On February 4, 2024, Sarah Little (“Appellant”) submitted a request to the Board for records related to the “removal” of an identified person from a specific board meeting and a “trespass” letter. On February 12, 2024, having received no response from the Board, the Appellant initiated this appeal.

Upon receiving a request to inspect records, a public agency must “determine within five (5) days, excepting Saturdays, Sundays, *and legal holidays*, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1) (emphasis added). Relevant here, President Abraham Lincoln’s Birthday is officially a “legal holiday” in the Commonwealth, celebrated on February 12 each year, and is a day “on which all the public offices of this Commonwealth may be closed,” KRS 2.110(1), even if many state agencies remain open for business on that day.<sup>1</sup> Thus, regardless of whether the Board was in fact closed in recognition of President Lincoln’s Birthday, KRS 61.880(1)(a) excludes from the computation of time all “legal holidays,” which includes all the holidays established by KRS 2.110. *See Watkins v. Ky. Ret. Sys. Bd. of Trs.* 276 S.W.3d 812, 813 (Ky. 2009) (holding petitioner’s deadline to file a claim for retirement benefits was extended to the day

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<sup>1</sup> See also KRS 18A.190(1) (listing the days on which “[s]tate offices shall be closed and state employees shall be given a holiday”).

after Columbus Day, which is a legal holiday under KRS 2.110, notwithstanding the fact that courts were open on Columbus Day).

On appeal, the Board states it received the request on February 4, and issued its response on February 13, 2024.<sup>2</sup> Under KRS 446.030(1)(a), when “computing any period of time prescribed . . . by any applicable statute . . . the day of the act, event or default after which the designated period of time begins to run is not to be included.” *See also* 22-ORD-133 n.1. It is undisputed that the Board received the request on Sunday, February 4. As such, the request is deemed to have been received on the first business day thereafter, Monday, February 5. As such, to be timely, the Board’s response would ordinarily have been due the following Monday, February 12. But as discussed above, Monday, February 12, 2024, was a legal holiday under KRS 2.110. The Board’s deadline to respond was therefore extended to the following day, Tuesday, February 13, 2024. Because the Board provides proof it issued its response on that day, it has carried its burden of proving that its response was timely. The Board, therefore, did not violate the Act.

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](mailto:OAGAppeals@ky.gov).

**Russell Coleman**  
**Attorney General**

/s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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<sup>2</sup> The Board further states, on appeal, that it has now provided all records responsive to the Appellant’s request and that the appeal is now moot. However, “[i]f a person 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)] . . . the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.” KRS 61.880(4). As such, the appeal is not moot because the Appellant claims the Board failed to respond within the five-day period established by KRS 61.880(1). Nevertheless, the Appellant does not dispute the Board’s response in any other way.

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Distributed to:

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