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24-ORD-076

March 20, 2024

In re: Randy Skaggs/Spencer County Judge/Executive

Summary: The Spencer County Judge/Executive's Office ("the agency") violated the Open Records Act ("the Act") when it did not respond to a request to inspect records within five business days.

Open Records Decision

Randy Skaggs ("Appellant") claims that, on January 22, 2024, he mailed a request to the agency for copies of various records related to the county's animal control shelters.¹ In a box in the top left corner of the request, in large font, the Appellant asked that "All Documents Be Remitted By April 1st, 2024." However, on the second page of the request, in underlined text in the last paragraph, he asked the agency to "inform [him] by Friday, February 9th, 2024, as to whether or not you intend to honor" his request. Having received no response from the agency by February 19, 2024, the Appellant initiated this appeal.

Upon receiving a request for records under the Act, a public agency "shall determine within five (5) [business] days . . . 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).

On appeal, the agency admits it received the request on January 25, 2024. However, it argues the request was improper because it cited to KRS 258.195. While it is true KRS 61.872 is the statute providing a right to inspect public records, not KRS 258.195, that fact is irrelevant. A person submitting a request to inspect records

¹ The Appellant claims to have mailed the same request to all 120 county judge/executives. As proof, he provides a picture of a tray containing several envelopes. However, the only address that is legible in the picture is the address at which the Appellant submitted his request to the Cumberland County Judge/Executive.

is not required to cite to any statutory authority. Moreover, the request is title “Open Records Request” in very large font.

The agency also argues the appeal is improper because the request allowed until April 1, 2024, to provide responsive records. However, in the final paragraph on the second page of the request the Appellant specifically asked the agency to notify him by February 9, 2024, whether it intended to grant or deny the request. In other words, while the Act required the agency to respond within five business days of January 25, 2024, when it received the request, the Appellant effectively agreed to waive any objection until February 9, 2024.

As explained, an agency has five business days from receipt of a request to notify the requester whether it will comply. KRS 61.880(1). The Appellant preemptively extended the agency’s deadline to comply with KRS 61.880(1) to February 9, 2024, and if the agency agreed to comply, he would further grant an extension of time until April 1, 2024, to provide the responsive records. *See, e.g.*, KRS 61.872(5) (allowing an agency to delay access to records that are “in active use, in storage, or not otherwise available” if the agency provides a detailed explanation for the cause of delay and the earliest date on which the records will be made available). Because the agency did not notify the Appellant within five business days of receiving his request, or by February 9, whether it would comply, it violated 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.

Russell Coleman
Attorney General

/s/ Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

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