



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-150

June 25, 2024

In re: R. Stephen McGinnis/Russell City Clerk

Summary: The Russell City Clerk (the “Clerk”) violated the Open Records Act (“the Act”) when it failed to properly invoke KRS 61.872(5) to delay the production of public records and subverted the intent of the Act, within the meaning of KRS 61.880(4), by delaying access to the requested records and engaging in excessive extensions of time.

Open Records Decision

On April 15, 2024, R. Stephen McGinnis (“Appellant”) submitted a request for records to the Clerk that contained 9 subparts. On April 21, 2024, the Clerk stated that, “due to the records [he] requested being in storage, [it] will have these records ready for [him] in 30 days.” On May 21, 2024, the Clerk stated it was “still working on researching the requested information to see if [it] [has] the records to produce for [his] request.” It further stated it needed “an additional 30 days to finish researching [his] request.” On May 28, 2024, the Appellant initiated this appeal because the multiple delays “seem[] to be an unreasonable amount of time given the documents which have been requested.”

A public agency has five business days from the receipt of a request for public records made under the Act to fulfill the request or deny it and explain why. KRS 61.880(1). A public agency can delay its production of responsive records beyond five business days if the records are “in active use, in storage or not otherwise available,” but it must “immediately notify the applicant” and give “a detailed explanation of the cause . . . for further delay . . . and earliest date on which the public record[s] will be available for inspection.” KRS 61.872(5).

Here, the Clerk notified the Appellant on April 21, 2024, that “due to the records [he] requested being in storage, [it] will have these records ready for [him] in

30 days.” However, the Clerk did not specifically invoke KRS 61.872(5) or provide a “detailed explanation of the cause . . . for further delay[.]” Then, the Clerk failed to meet its 30-day deadline to provide the records to the Appellant. Thus, the Clerk violated the Act when it failed to properly invoke KRS 61.872(5) to delay the production of public records.

Under KRS 61.880(4), a person who “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) or “excessive extensions of time,” may appeal to the Attorney General as if the record had been denied. A public agency subverts the intent of the Act within the meaning of KRS 61.880(4) when it fails to make a final disposition of a request on the date to which it has committed under KRS 61.872(5) and fails to give a detailed explanation of the cause for further delay. *See, e.g.,* 23-ORD-079; 21-ORD-228.

Thirty days after its first response, the Clerk told the Appellant that it would “need an additional 30 days to finish researching [his] request” because it was “still working on researching the requested information to see if [it] [has] the records to produce for [his] request.” The Clerk’s second response indicates that it had not located the requested records. Since the Clerk had yet to locate the records, it did not provide any information about the number of records implicated by the Appellant’s request or the actual time required to review and provide the records.

In determining whether a delay is reasonable, the Office considers such factors as the number, location, and content of the requested records. *See* 21-ORD-045. “Weighing these factors is a fact-intensive inquiry.” *Id.* A public agency bears the burden of proof to sustain its action in an open records appeal. KRS 61.880(2)(c). The Clerk has not stated how many records are implicated by the request or where those records are located, or described the content of the records. Accordingly, the Clerk did not meet its burden of proof to justify its initial delay of 30 days, nor did it justify its delay of an additional 30 days. Thus, the Clerk subverted the intent of the Act, within the meaning of KRS 61.880(4), by delaying access to the requested records and engaging in excessive extensions of time.

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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