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25-ORD-086

March 31, 2025

In re: Ryan J. Dischinger/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 did not respond to a request within five business days, and when it invoked KRS 61.872(5) but failed to give a detailed explanation of the reason for delay or dispense with the request on the date by which it had said records would be available for inspection.

Open Records Decision

On January 15, 2025, Ryan J. Dischinger (“Appellant”) submitted a request to Metro seeking “all emails” between eight individuals containing three phrases “sent or received between July 5, 2024, and January 14, 2025.” On January 24, 2025, Metro cited KRS 61.872(5) and stated that “because the records contain a mixture of exempt and nonexempt information and required an email search,” they would be available on January 31, 2025. On January 31, 2025, Metro stated that it needed “additional time to gather [the Appellant’s] request” and that responsive records would be available on February 28, 2025. On March 3, 2025, the Appellant, having yet to receive the requested records, requested an update regarding the status of his request. On March 5, 2025, having received no further response, the Appellant initiated this appeal.

Under KRS 61.880(1), a public agency has five business days to fulfill or deny a request for public records. This period may be extended if the records are “in active use, in storage or not otherwise available,” but the agency must give “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection.” KRS 61.872(5). Under KRS 61.880(4), a person may petition the Attorney General to review an agency’s action if the “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) or] excessive extensions of time.”

Here, Metro did not respond to the request within five business days. When it did respond, it did not give a detailed explanation of the cause for further delay.¹ Although Metro stated the earliest date on which the records would be available for inspection, it did not make any records available by that date. Then it missed the second date on which it stated records would be made available. The Office has found that a public agency does not comply with KRS 61.872(5) when it notifies the requester of the earliest date on which requested records would be available but then misses its self-imposed deadline. *See, e.g.*, 23-ORD-079; 21-ORD-011. Therefore, Metro subverted the intent of the Act by delay and excessive extensions of time, within the meaning of KRS 61.880(4), when it failed to timely respond or make a final disposition of the Appellant’s request by the date on which it said the records would be made available.²

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

¹ Metro stated that the records were unavailable “because the records contain a mixture of exempt and nonexempt information and required an email search.” But all requests for records require an agency to conduct a search and separate and redact exempted information, *see* KRS 61.878(4). Thus, Metro’s explanation, standing alone, is not a detailed explanation that justifies a delay under KRS 61.872(5).

² Metro claims this appeal is moot because it has provided all responsive records to the Appellant. *See* 40 KAR 1:030 § 6 (“If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.”). In response, the Appellant points to Metro’s January 31, 2025, communication which stated 450 responsive emails existed and states he has only been provided 281 emails. The parties disagree about whether all responsive records have been provided. Therefore, this appeal is not moot.

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Distributed to:

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