



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-107

April 25, 2025

In re: Kurt Wallace/Prosecutors Advisory Council

**Summary:** The Prosecutors Advisory Council (“the Council”) violated the Open Records Act (“the Act”) when it did not respond to a request to inspect records within five business days of receipt or otherwise notify the requester of the proper email address to submit his requests.

### *Open Records Decision*

On March 19, 2025, Kurt Wallace (“the Appellant”) submitted a two-part request to the Council for (1) “all records filed with” it “and all records of judgments filed with [the] State Treasurer” by the “Bullitt County Attorney’s Office” and (2) the “Record of Notification” sent to the Council stating that the “Executor Office of” three individuals is “occupied” and that “the prosecutors have a fiduciary duty, thereto.” Having received no response by March 27, 2025, the Appellant initiated this appeal.

Under KRS 61.880(1), 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.” On appeal, the Council states that the request was not sent to its Official records custodian or its designated email address for open records requests.<sup>1</sup> The Council is correct that the method by which the Appellant submitted his request did not comply with the Act. If a person chooses to submit his request by email, he must send the email “to the public agency’s official custodian of public records or his or her designee at the e-mail address designated in the public agency’s rules and regulations.” KRS 61.872(2)(b)4. Here, the Appellant submitted his request to the general contact email address for

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<sup>1</sup> Under KRS 15.710(6), the Council may delegate to the Office of the Attorney General “other functions as may be assigned by the [C]ouncil.” Pursuant to this authority, the Office’s official records custodian serves as the official records custodian for the Council.

the Council.<sup>2</sup> However, under KRS 61.872(4), “[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.” Thus, even though the Appellant did not comply with KRS 61.872(2)(b)4. by emailing his request to the wrong address, the owner of the email address to whom the request was directed should have informed the Appellant of the proper email address to use when submitting his request. Instead, the Appellant’s request was ignored. Thus, the Council violated KRS 61.872(4) when it failed to inform the Appellant of the proper email address to use for submitting his request.<sup>3</sup>

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

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Distributed to:

Kurt Wallace  
Brystin Denguessi Kwin

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<sup>2</sup> See Office of the Prosecutors Advisory Council, *available at* <https://www.ag.ky.gov/about/Office-Divisions/pac/Pages/default.aspx> (last visited April 16, 2025).

<sup>3</sup> On appeal, the Council states that it has provided the Appellant “with all records in its possession responsive to the request” and identified the records that it does not possess. Because the Council did not respond to the request before receiving notice of this appeal, the Office must conclude that it committed a technical violation of the Act by causing “delay past the five (5) day period described in” KRS 61.880(1). KRS 61.880(4); *see, e.g.*, 24-ORD-163 n.1 (finding an appeal of the Agency’s failure to respond was not moot when the Agency produced the requested records after receiving the notice of the appeal); 23-ORD-274 n.1 (finding an appeal was not rendered moot by the Agency’s production of responsive records after the appeal was initiated because the Appellant alleged the agency subverted the Act by failing to respond within five business days); 23-ORD-007 (finding the Agency violated the Act when it failed to respond to the Appellant’s request within five business days although the Agency stated it planned to provide responsive records).