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25-ORD-114

May 2, 2025

In re: David Gardner/City of Salyersville

**Summary:** The City of Salyersville (“the City”) violated the Open Records Act (“the Act”) when it delayed the Appellant’s access to records beyond five business days without properly invoking KRS 61.872(5). The Office cannot find the City violated the Act when it claims to have provided all records responsive to a request.

***Open Records Decision***

On January 10, 2025, David Gardner (“Appellant”) submitted a request to the City containing ten parts.<sup>1</sup> On February 24, the City granted his request, stating that “[t]he records will be ready this evening, and you can pick them up at any time tomorrow.” On April 8, the Appellant initiated this appeal, claiming the City “fail[ed] to provide the requested records.”

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<sup>1</sup> Specifically, the Appellant requested: (1) “A listing of all outstanding vendor invoices, current loans with payments requirements, and any other fiscal liabilities the City of Salyersville”; (2) “A list of all employees doing work associated with the water and sewer functions of the City employed since June 29, 2024, their wages (salaries) and benefits including retirement and medical insurance”; (3) “Copies of the City of Salyersville and Salyersville Water Works, and Salyersville Tourism Commission budgets for FY 23-24 and FY 24-25”; (4) “A copy of all bank statements for each account associated with the water and sewer and with tourism from July 1, 2024 until now”; (5) “A copy of the most recent bank statements for the City of Salyersville”; (6) “A copy of all reports with Total Water Sales and Total Sewer Sales for FY 23-24 and YTD report for current Fiscal Year”; (7) “Copies of all meeting agenda, meeting notices, and meeting minutes of the Salyersville Tourism Commission since July 1, 2023”; (8) “Copies of FY 23-34 and FY 24-25 budgets for the City of Salyersville, Salyersville Water Works, and Salyersville Tourism Commission”; (9) “Copies of all MOR, CCR, and DMR reports submitted to the Kentucky Division of Water for the water and sewer operations of the City of Salyersville since July 1, 2024”; and (10) “Copies of any weekly payroll reports showing hours worked including overtime hours for all employees associated with water and sewer activities of the City of Salyersville for the current Fiscal Year.”

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). A public agency may also delay access to responsive records beyond five business days if such records are “in active use, storage, or not otherwise available.” KRS 61.872(5).

A public agency that invokes KRS 61.872(5) to delay access to responsive records must also notify the requester of the earliest date on which the records will be available and provide a detailed explanation for the cause of the delay. The Office has previously found that a public agency fails to justify a delay when it does not explain how long it would take to process the responsive records. *See, e.g.*, 23-ORD-328 (the public agency did not properly justify a six-month delay to fulfill a request implicating 382 “data files” when it failed to explain what it meant by “data file” or how long it would take to process each record).

Here, on January 10, the Appellant submitted his request to the City and he claims that, as of April 8, it had yet to provide the records he requested. On appeal, the City claims that “a substantial portion of [the Appellant’s] request was made available to him within the five-day timeframe,” and the “delay in providing the remaining documents was attributable to the extensive nature of the request, the lack of clarity in his specifications, and the limited availability of staff to fulfill his needs.” However, the City admits it did not provide all responsive records for the Appellant to pick up until February 28, 2025.

The City carries the burden for sustaining its actions. KRS 61.880(2)(c). But the City does not claim to have invoked KRS 61.872(5) to delay the Appellant’s access to responsive records. Thus, because the City admits it did not fulfill the Appellant’s January 10, 2025, request until February 28, 2025, it violated the Act by delaying the Appellant’s access to the requested records beyond five business days.

The Appellant further argues the City has not made available all records responsive to his request. However, the City maintains that all responsive records were provided on February 28, 2025. The Office has consistently found that it is unable to resolve factual disputes between the parties to an appeal under KRS 61.880(2)(a), such as whether all records responsive to a request have been provided, or whether requested records should contain additional content. *See, e.g.*, 25-ORD-037; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81. Accordingly, the Office is unable to find the City violated the Act when it provided what it considered to be all records responsive to the Appellant’s request.

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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Distributed to:

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