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25-ORD-150

June 10, 2025

In re: Morgan Watkins/Louisville Metro Government

Summary: The Louisville Metro Government ("Metro") violated the Open Records Act ("the Act") when it did not grant or deny the Appellant's requests within five business days. Metro did not violate the Act when it determined a request posed an unreasonable burden under KRS 61.872(6).

Open Records Decision

On April 30, 2025, Morgan Watkins ("Appellant") submitted to Metro two requests for various categories of correspondence. The first request sought "any and all correspondence sent or received by" the mayor, or by "any official, staff member[,] or other representative" of four of Metro's divisions[1] related to the "proposed tennis and pickleball development project at Joe Creason Park." The Appellant requested that Metro include any correspondence sent or received between January 1, 2024, and the date of her request. The Appellant also requested that Metro include "any and all correspondence sent to or from" four named employees of the Kentucky Tennis and Pickleball Center or any of its staffers, officers, directors, or other representatives. The Appellant included as keywords: tennis, pickleball, Kentucky Tennis and Pickleball Center, and KYTPC.

The Appellant's second request sought "any and all correspondence sent or received by" the mayor, or by "any official, staff member[,] or other representative" of four of Metro's divisions[2] with eight individuals associated with Bellarmine University. The Appellant requested that Metro include any correspondence sent or received between January 1, 2024, and the date of her request.

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1 Specifically, the Appellant identified the Economic Development Department, the Office of Planning, the County Attorney's Office, and the Parks Department.

2 The Appellant identified the same four divisions as in her first request.

On May 6, 2025, in response to both requests, Metro stated it needed the Appellant to "provide the email addresses of the [identified] individuals as they are not [Metro] employees" and it has "no way of searching communications with an external party specifically without their email address." On May 12, 2025, having received no further response from Metro, 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). If an agency denies in whole or in part the inspection of any record, its response must include "a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." *Id*.

Metro's initial responses neither granted nor denied the Appellant's request. Rather, without citing any provision of the Act, Metro stated that the Appellant must provide email addresses of non-Metro employees. On appeal, Metro acknowledges that "requesters do not have a duty to submit email addresses for private individuals." Thus, Metro violated the Act when it failed to grant or deny the Appellant's request within five days of receiving it.[3]

On appeal, under KRS 61.872(6), Metro now asserts that the Appellant's first request is unduly burdensome.[4] Under KRS 61.872(6), a public agency may deny a request to inspect records "[i]f the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency." However, an agency must substantiate its denial "by clear and convincing evidence."

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[3] Metro explains that it asked the Appellant to identify specific email addresses because, without that information, it believed the requests would be unduly burdensome. Thus, Metro explains that its request was intended to avoid an outright denial of the request under KRS 61.872(6). According to Metro, the Appellant did not respond to its invitation to narrow the request, so it closed out the requests. A public agency does not violate the Act by attempting to work with a requester to narrow a request that might be unduly burdensome in its current form. However, even if a requester declines to narrow his or her request (or ignores such a request), the public agency must still comply with KRS 61.880(1) by granting or denying the request within five business days, citing exemptions that authorized any denial or redaction of responsive records, and explaining how those exceptions applied to the records.

[4] Metro advises that it has provided the Appellant with all records responsive to her second request. As such, any dispute as to that request is moot. *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.").

Id. When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction. *See, e.g.*, 97-ORD-088 (finding a request implicating thousands of physical files pertaining to nursing facilities to be unreasonably burdensome, where the files were maintained in physical form in several locations throughout the state, and each file was subject to confidentiality provisions under state and federal law). Of these, the number of records implicated "is the most important factor to be considered." 22-ORD-182. In addition to these factors, the Office has found that a public agency may demonstrate an unreasonable burden if it does not catalog its records in a manner that will permit it to query keywords mentioned in the request. *See, e.g.*, 96-ORD-042 (finding that it would place an unreasonable burden on the agency to manually review thousands of files for the requested keyword to determine whether such records were responsive). When a request does not "precisely describe" the records to be inspected, KRS 61.872(3)(b), the chances are higher that the agency is incapable of searching its records using the broad and ill-defined keywords used in the request.

Metro explains that the parameters of the Appellant's request cause it to be unreasonably burdensome. To start, Metro points out that the Appellant request all correspondence sent to or from any "staff member" in its Economic Development, Planning, and Parks departments.[5] Metro explains that this includes approximately 448 Metro employees. Moreover, Metro explains that although the Appellant did provide responsive keywords, some of those keywords expand, rather than narrow, the scope of responsive records. Specifically, Metro explains that its park system has over 170 tennis courts and 16 different parks have pickleball courts. According to Metro, its employees "frequently email about tennis and pickleball activities all across the city, and the time frame for this request covered 16 months of emails." Thus, a search of 16 months of communications by 367 parks employees containing the words "tennis" or "pickleball" is unlikely to adequately narrow the scope of responsive records.

Metro explains that it conducted an initial limited search to determine the breadth of the Appellant's request. Metro explains it searched for emails sent between January 1, 2024, and April 30, 2025, sent by "eleven key Metro official and department leaders most likely to have KYTPC-related records" only using the

[5] On appeal, Metro states that requests for records belonging to the Jefferson County Attorney's Office should be directed to that office's records custodian and provided his name, location, and contact information. *See* KRS 61.872(4).

keywords "Joe Creason" and "pickleball." That search resulted in 7,593 responsive records. Metro further explains that because the KYTPC project was abandoned, many emails "are very likely to contain confidential and proprietary business plans" exempt under KRS 61.878(1)(c) and that other records are likely "exempt as preliminary recommendations under KRS 61.878(1)(i) or (j)."

Metro estimates, at the rate of three minutes per record, review and redaction would take 379 hours of staff time, or 9.5 weeks of full-time effort. In 23-ORD-076, the Office found a public agency had met its burden of "clear and convincing evidence" that it would be unreasonably burdensome to redact 71,000 records at 20 seconds per record, for a total of 394 hours of staff time. Here, the estimated time articulated by Metro to review the records is commensurate with that in 23-ORD-076. *See also* 25-ORD-042. Moreover, Metro has explained that the number of responsive records identified is likely to be substantially larger than the number identified in its initial, limited search. Accordingly, Metro has met its burden of proof under KRS 61.872(6) and, therefore, did not violate the Act when it denied 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.

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/s/ Zachary M. Zimmerer
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