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25-ORD-160

June 20, 2025

In re: Marc McCarty/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“the Cabinet”) violated the Open Records Act (“the Act”) when it failed to grant or deny the request within five business days of receiving it.

Open Records Decision

On May 13, 2025, Marc McCarty (“Appellant”) submitted a request to the Cabinet¹ seeking four categories of records related to the procedures it uses to evaluate employees when adjusting their classification and salary. The same day, the Cabinet confirmed receipt of the request and stated that the “request will be forwarded to the relevant department(s) to locate the records and determine the volume and costs associated with satisfying [the Appellant’s] request.” On May 21, 2025, the Appellant initiated this appeal, claiming that he had received “no response from the agency.”

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). Here, the Appellant states he submitted a request to the Cabinet, on May 13, 2025, and has not received a response granting or denying the request. On appeal, the Cabinet does not assert that it timely responded to the Appellant’s request. Rather, it states that “the request was overlooked and there was a delay in providing the requested records.”

¹ The Appellant sought records belonging to the Office of Human Resource Management, a part of the Cabinet.

Thus, the Cabinet concedes it violated the Act when it failed to grant or deny a request within five business days of receiving it.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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Marc McCarty
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² On appeal, the Cabinet states that when it “was made aware of the appeal, [it] supplied the requested records.” The Appellant confirmed receipt of the records the Cabinet provided but also asserts “that additional responsive records exist[.]” Because this appeal was brought due to the Cabinet’s failure to grant or deny the Appellant’s request, the Appellant’s new claim that additional records exist is not ripe for review. *See* 23-ORD-135 n.3.