



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-163

June 24, 2025

In re: Rob Mattheu/Oldham County Fiscal Court

Summary: The Oldham County Fiscal Court (“the Fiscal Court”) violated the Open Records Act (“the Act”) when it did not comply with KRS 61.880(1) by conducting a search for responsive records. The Fiscal Court also violated the Act when it denied a portion of a request as too imprecise.

Open Records Decision

Rob Mattheu (“Appellant”) submitted a request to the Fiscal Court seeking all emails to or from a particular magistrate between March 1 and May 20, 2025, which contained any of the following phrases: “Data Center,” “Fake News,” “Western Hospitality,” “Project Lincoln.” In response, the Fiscal Court quoted the language of KRS 61.878(1)(i) and (j), stating it could “share records, *if they exist*, whe[n] a final decision or notice has been made. General correspondence would be exempt from public inspections” (emphasis added). This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant or deny the request. KRS 61.880(1). If it denies the request, the agency’s response “shall 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.* “In response to a request, a public agency must conduct a search for responsive records, in good faith, to discharge its duty under the Act.” 20-ORD-192. Without conducting a proper search and identifying responsive records, an agency cannot adequately explain “how the exception applies to the record withheld.” *See, e.g.*, 19-ORD-205 (finding “no general rule” excusing a public agency from searching for responsive records and holding that a denial “based on what a hypothetical [set of records] might contain” is inadequate).

Here, the Fiscal Court's initial response stated that responsive records would be exempt under KRS 61.878(1)(i) and (j), "if they exist." However, such a response fails to clearly state whether responsive records exist and are being withheld pursuant to the cited exemptions or that no responsive records exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005) (stating that if responsive records do not exist, the public agency must affirmatively state that such records do not exist). Thus, the Fiscal Court's initial response violated the Act by failing to comply with KRS 61.880(1).

On appeal, the Fiscal Court states it need not search for records responsive to the Appellant's request because he has not sought "clearly defined public records" and a "keyword-based search through a broad swath of electronic correspondence" is a "speculative or vague inquir[y]." When a person requests copies of public records under the Act, "[t]he public agency shall mail copies of the public records to a person . . . after he or she precisely describes the public records which are readily available within the public agency." KRS 61.872(3)(b). A description is precise "if it describes the records in definite, specific, and unequivocal terms." 98-ORD-17 (internal quotation marks omitted). This standard may not be met when a request does not "describe records by type, origin, county, or any identifier other than relation to a subject." 20-ORD-017 (quoting 13-ORD-077). Requests for any and all records "related to a broad and ill-defined topic" generally fail to precisely describe the records. 22-ORD-182; *see also* 21-ORD-034 (finding a request for any and all records relating to "change of duties," "freedom of speech," or "usage of signs" did not precisely describe the records); *but see Univ. of Ky. v. Kernel Press, Inc.*, 620 S.W.3d 43, 48 n.2 (Ky. 2021) (holding a request was proper when it sought "all records detailing [the] resignation" of a specific employee). A request that does not precisely describe the records "places an unreasonable burden on the agency to produce often incalculable numbers of widely dispersed and ill-defined public records." 99-ORD-14.

The Office has previously found that a request for any emails sent or received by agency personnel containing certain keywords is not a vague request. *See, e.g.*, 23-ORD-006 (involving emails of 13 employees); 23-ORD-010 (same); 23-ORD-230 (involving emails of 30 employees). Here, the Appellant seeks emails sent to or from a single individual's email account. Moreover, the Appellant has limited his request to only emails containing one of four key phrases that were sent in a two and a half month period. As such, the request is sufficiently specific for the Fiscal Court to

conduct the statutorily required search. Thus, the Fiscal Court violated the Act when it denied the Appellant's request for emails.¹

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

#223

Distributed to:

Rob Mattheu
David Voegele, Judge-Executive, Oldham County Fiscal Court
Joe Ender, Deputy Judge Executive, Oldham County Fiscal Court
David Berry Baxter, Oldham County Attorney

¹ Because the Fiscal Court has not identified any responsive records, the Office declines to address the Fiscal Court's additional arguments related to it having previously granted similar requests, whether redaction is possible, or whether responsive records, if they did exist, would be exempt under KRS 61.878(1)(i) and (j). *See* 20-ORD-192 ("[W]ithout having identified any responsive records, [the agency] is unable to assert that [the exemption] applies to deny inspection.").