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25-ORD-164

June 26, 2025

In re: Rebekah Atkins/Louisville Metro Police Department

Summary: The Louisville Metro Police Department (“the Department”) violated the Open Records Act (“the Act”) when it did not properly invoke KRS 61.872(5). The Office is unable to resolve the factual dispute between the parties regarding whether the Department required the Appellant submit her request for records online.

Open Records Decision

Rebekah Atkins (“Appellant”) submitted a request to the Department for a copy of “LMPD-PSU COMPLAINT 24-038 AND ALL RELEVANT DOCUMENTS, INFORMATION, ETC.” The Department partially granted the request and provided some responsive records.¹ Regarding responsive “audio/video records,” the Department invoked KRS 61.872(5) and notified the Appellant that the “audio/video records” are “not available because [the Department] needs additional time to gather your request.”² The Department stated the records would be available on or before July 1, 2025. This Appeal followed.

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.” A public agency may delay access to responsive records, beyond the five business days described in KRS 61.880(1), if such records are “in active use, storage, or not otherwise available.” KRS 61.872(5). A public agency invoking KRS 61.872(5) to delay

¹ On appeal, the Department states it provided “copies of 21 documents” to Appellant.

² The Department further explained that additional time was needed because it must “search for electronic records”; the request “requires redactions” of the records; and the “records contain a mixture of exempt and nonexempt information.”

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 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, the Department granted the Appellant’s request and provided some responsive records within five business days. However, the Department stated that responsive “audio/video” records would not be available until July 1, 2025, because the records “contain a mixture of exempt and nonexempt information”; require “a search for electronic records”; and require redactions.” “However, the Act contemplates that all those actions should be completed within five business days for every request, unless KRS 61.872(5) applies.” 25-ORD-076. A need to search for and redact responsive records does not make them unavailable within the meaning of KRS 61.872(5). *See* 25-ORD-076 (explaining that the agency had not identified the number or size of the responsive records, did not describe their content or the applicable exemptions, and did not describe any additional causes of delay). Here, the Department failed to explain what it meant by “audio/video records,” how many were implicated, or how long it would take to process each one.³ Thus, the Department failed to provide a detailed explanation for the cause of delay and, therefore, violated the Act. *See* KRS 61.872(5).

The Appellant also claims that the Department refused to accept allow her to submit her request in person and, instead, required her to file her request online. Under KRS 61.872(2)(c), “[a] public agency shall not require the use of any particular form for the submission of an open records request.” The Office has also found that a public agency misdirects requesters, within the meaning of KRS 61.880(4), when the agency requires the use of a particular online form to submit requests under the Act. *See, e.g.*, 22-ORD-167.

For its part, the Department denies that it refused to accept the Appellant’s in-person, written request, or that it required her to submit her request online. Thus,

³ On appeal, the Department explains that the video captures the “inside of the Commonwealth Attorney’s Office while citizens were utilizing individual Party Access Terminals to review their private court records.” The Department further explained that the “video and audio must be reviewed to ensure that the other individuals’ private information is not disclosed” to the Appellant. However, the Department did not disclose the number of “audio/video” records implicated by the Appellant’s request or the size of such records.

a factual dispute exists between the parties. The Office has historically found that it is unable to resolve factual disputes such as this. *See, e.g.,* 25-ORD-068; 96-ORD-70. The Office therefore cannot resolve this factual dispute.

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
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Distributed to:

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