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25-ORD-173

July 10, 2025

In re: Ryan J. Dischinger/Louisville Metro Government

Summary: The Louisville Metro Government (“Metro”) subverted the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), when it delayed access to requested records for over two months.

Open Records Decision

On April 4, 2025, Ryan J. Dischinger (“Appellant”) submitted a request to Metro for “[a]ll correspondence . . . involving” the Mayor or Deputy Mayor that includes six keywords or phrases “sent or received” between January 1 and April 4, 2025.¹ On April 14, 2025, Metro invoked KRS 61.872(5), stating that the records are “in active use, in storage or not otherwise available” because the request “[r]equires legal review”; “[t]he scope of the request is broad”; “[t]he records contain a mixture of exempt and nonexempt information”; and the request “[r]equires an email search.” Metro further stated the records would be available “on or before close of business 06/04/2025.” On June 10, 2025, having received no further response from Metro, the Appellant initiated this appeal.²

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). The time period under KRS 61.880(1) may be extended if the records are “in active use, in storage or not otherwise available,” but the agency must give “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection.” KRS 61.872(5). In determining how much delay is reasonable, the Office has considered the number of records the

¹ The Appellant specifically identified the keywords and phrases “unlawful camping,” “camping docket,” “homeless court,” “encampment,” “homeless,” and “clearing.”

² On June 6, 2025, the Appellant inquired to Metro as to the status of his request and received no response.

requester has sought, the location of the records, and the content of the records. *See, e.g.,* 22-ORD-176; 01-ORD-140; OAG 92-117. Weighing these factors is a fact-intensive analysis. *See* 21-ORD-045. Ultimately, the agency bears the burden of proof to sustain its action. KRS 61.880(2)(c).

Here, Metro’s initial response stated only that the request “[r]equires legal review”; “[t]he scope of the request is broad”; “[t]he records contain a mixture of exempt and nonexempt information”; and the request “[r]equires an email search.” 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). Moreover, merely asserting that a request is “broad” without identifying the number of records the requester sought, their location, or the content of the records fails to provide a detailed explanation of the cause for further delay. *See, e.g.,* 23-ORD-343 (finding the agency failed to adequately invoke KRS 61.872(5) when it delayed its response “due to the breadth” of the requests without quantifying or estimating the number of records implicated by the request). Accordingly, Metro’s initial response did not provide a detailed explanation for the cause of delay and, therefore, violated the Act.

A requester who believes an agency’s delay is unreasonable may seek the Attorney General’s review by alleging the agency subverted the intent of the Act by “delay past the five (5) day period described in [KRS 61.880(1)].” KRS 61.880(4). Here, Metro gave June 4, 2025, as the date by which it would make records available, but did not make any records available or otherwise contact the Appellant by that date. A public agency subverts the intent of the Act by excessive extensions of time when it fails to meet a self-imposed deadline to make records available. *See, e.g.,* 23-ORD-079; 21-ORD-011. Therefore, Metro subverted the intent of the Act, within the meaning of KRS 61.880(4), when it unreasonably delayed access to records beyond the five-day period under KRS 61.880(1).³

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.

³ On appeal, Metro explains that the request implicated “1,000 pieces of correspondence” and that, although “the review took longer than expected,” it “released the non-exempt records” to the Appellant.

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