



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

25-ORD-202

July 30, 2025

In re: Adrienne Southworth/Department of Revenue

Summary: The Department of Revenue (“the Department”) subverted the intent of the Open Records Act (“the Act”) when it failed to produce records within its own self-imposed deadline.

Open Records Decision

On May 20, 2025, Adrienne Southworth (“Appellant”) submitted a request to the Department seeking (1) “The written justification . . . submitted to the Personnel Cabinet for every ACE award request from the [Department] for any of its employees from January 1, 2015 – May 16, 2025”; (2) records “regarding an increase in starting salary for new hired at the [Department], between January 1, 2015 – May 16, 2025”; (3) all correspondence between Department Staff and “any member” of the “Finance and Administration Cabinet, Personnel Cabinet, or Governor’s Office” regarding ACE awards between January 1, 2020 – May 16, 2025”; and (4) all correspondence between Department Staff and “any member” of the “Finance and Administration Cabinet, Personnel Cabinet, or Governor’s Office” regarding seven specified topics. In response, the Department stated that “due to the voluminous nature of [the Appellant’s] request, and the fact that some of our records are still maintained in paper format and must be scanned by hand to produce them electronically,” it “expect[s] to be able to fully respond to [the Appellant’s] request on or before Wednesday, June 25, 2025.” On June 25, 2025, citing the same justifications, the Department stated it would “respond to [the Appellant’s] request not later than July 25, 2025.” On July 1, this appeal followed.

Under KRS 61.880(1), a public agency has five business days to fulfill or deny a request for public records. This period 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). Under KRS 61.880(4), a person may petition the Attorney General to review an agency’s action if the “person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . delay past the five (5) day period described in [KRS 61.880(1) or] excessive extensions of time.”

Here, the Department’s initial response did not grant or deny the Appellant’s request. Instead, it invoked KRS 61.872(5), explaining that additional time was needed due to the “due to the voluminous nature of [the Appellant’s] request” and because some of the requested records are maintained in paper format. However, although the Department stated the records would be available for inspection “on or before June 25, 2025,” it did not make any records available by that date. The Office has found that a public agency does not comply with KRS 61.872(5) when it notifies the requester of the earliest date on which requested records would be available but then misses its self-imposed deadline. *See, e.g.*, 25-ORD-086; 23-ORD-079; 21-ORD-011. Therefore, the Department subverted the intent of the Act by delay and excessive extensions of time, within the meaning of KRS 61.880(4), when it failed to make a final disposition of the Appellant’s request by the date on which it said the records would be made available.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

¹ After this appeal was initiated, the Department provided the Appellant with all non-exempt records in its possession.

#302

Distributed to:

Adrienne Southworth

Maurette Harris, Open Records Coordinator, Kentucky Department of Revenue

Sherry D. Dungan, Security and Disclosure Officer, Kentucky Department of Revenue

Bethany Atkins Rice, Executive Director, Office of General Counsel, Kentucky Department of Revenue