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25-ORD-211

August 5, 2025

In re: Andrew Cooperrider/Cabinet for Economic Development

Summary: The Cabinet for Economic Development (“the Cabinet”) did not violate the Open Records Act (“the Act”), when it redacted a bank account number, when it did not provide records it does not possess, or when it determined parts of the request posed an unreasonable burden under KRS 61.872(6).

Open Records Decision

Andrew Cooperrider (“Appellant”) submitted to the Cabinet a seven-part request seeking records related to an “economic incentive agreement” between the Commonwealth and Envision AESC Bowling Green, LLC (“Envision”).¹ In response, the Cabinet provided all records responsive to parts 1 and 5 of the request. It provided all records responsive to part 4 of the request with “bank account numbers for the associated wire transfer of funds redacted” under KRS 61.878(1)(c)2.a., KRS 61.878(1)(c)2.b., KRS 61.878(1)(l), and KRS 61.878(4). It stated that it does not possess any records responsive to part 6 of the request. Finally, it denied parts 2, 3, and 7 of the request under KRS 61.872(6) because they implicated 11,324 records containing materials exempt under KRS 61.878(1)(c)2.b., KRS 61.878(1)(c)1., and KRS 61.878(1)(a), (i), and (j). This appeal followed.

¹ Specifically, the Appellant requested (1) “The Agreement, and/or any amendments or cancellations of the Agreement”; (2) all records submitted by Envision “that documents or discusses [Envision’s] performance under, or that otherwise relates to, the Agreement”; (3) all records “sent to or received by the [Cabinet] that relates to or references, or is contained in any filed [sic] maintained by the [Cabinet], related to the Agreement or Envision”; (4) all records “that discuss or reflect payments or disbursements of public funds, to Envision”; (5) all records “that reflect communications between any person in the Office of the Governor of Kentucky, and anyone at [the Cabinet], discussing the Agreement or Envision”; (6) all records “submitted to the Kentucky General Assembly that discusses or relates to the Agreement or Envision”; and (7) “Any communications with, or drafts of the Agreement, sent to [Envision] or any Representative of it, prior to December 8, 2022, including any application(s) related to the Agreement or Envision AESC Bowling Green, LLC.”

On appeal, the Appellant does not particularly identify which portion of the Cabinet's response he believes violated the Act. Thus, the Office will consider, in turn, the Cabinet's redaction of bank account numbers, its assertion that it does not possess records responsive to part 6 of the request, and its denial of parts 2, 3, and 7 of the request.

KRS 61.878(1)(c)2.a. exempts "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained . . . [i]n conjunction with an application for or the administration of a loan or grant." Here, the Cabinet explains it redacted bank account numbers provided by Envision associated with "wire transfer of funds." The Appellant does not dispute that the wire transfers were associated with "the administration of a loan or grant." Accordingly, the Cabinet did not violate the Act by redacting the bank account numbers.²

Regarding part 6 of the request, which sought certain records submitted to the General Assembly, the Cabinet maintains it does not possess responsive records. Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to make a *prima facie* case that the records do exist and that they are within the agency's possession, custody, or control. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the records do or should exist, "then the agency may also be called upon to prove that its search was adequate." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). Here, the Appellant has not attempted to make a *prima facie* case that the Cabinet possesses records responsive to part 6 of the request. Thus, the Cabinet did not violate the Act by not providing records it does not possess.

On appeal, citing KRS 61.872(6), the Cabinet maintains that granting parts 2, 3, and 7 of the Appellant's request would be unduly burdensome. Under KRS 61.872(6), a public agency may deny a request to inspect records "[i]f the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other

² The Cabinet also redacted the bank account number associated with an account belonging to it. The Office has consistently found that disclosure of bank account numbers used by a public agency "places an unreasonable burden" on the agency within the meaning of KRS 61.872(6) because "public money would be at risk of theft" and the "agency would be forced to change bank accounts and change the paperwork associated therewith." See 22-ORD-112; 16-ORD-012; 06-ORD-167.

essential functions of the public agency.” However, an agency must substantiate its denial “by clear and convincing evidence.” *Id.*

When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction. *See, e.g.,* 97-ORD-088 (finding a request implicating thousands of physical files pertaining to nursing facilities to be unreasonably burdensome, where the files were maintained in physical form in several locations throughout the state, and each file was subject to confidentiality provisions under state and federal law). Of these, the number of records implicated “is the most important factor to be considered.” 22-ORD-182. In addition to these factors, the Office has found that a public agency may demonstrate an unreasonable burden if it does not catalog its records in a manner that will permit it to query keywords mentioned in the request. *See, e.g.,* 96-ORD-042 (finding that it would place an unreasonable burden on the agency to manually review thousands of files for the requested keyword to determine whether such records were responsive). When a request does not “precisely describe” the records to be inspected, KRS 61.872(3)(b), the chances are higher that the agency is incapable of searching its records using the broad and ill-defined keywords used in the request.

The Cabinet explains that the parameters of the Appellant’s request cause it to be unreasonably burdensome to compile the requested records. The Cabinet states that it employs 80 individuals. According to the Cabinet, because parts 2 and 3 of the request seek “[a]ny Public Records” and part 7 seeks “[a]ny communications” related to the Cabinet and Envision, it must review all its employees’ records to determine if they are related to “the state incentives awarded to Envision AESC Bowling Green, LLC.” Indeed, the Office has previously agreed the number of people employed by an agency is relevant in evaluating the burden of a particular request. *See, e.g.,* 25-ORD-150; 24-ORD-048.

The Cabinet explains that it conducted an initial limited search to determine the breadth of the Appellant’s request. The Cabinet explains it searched for only emails sent to or from “the five . . . employees most likely to have records pertaining to the request” using search terms it created itself. That search resulted in 8,832 responsive records. The Cabinet further explains that many of the email records contain “records that are confidential or proprietary in nature [and] disclosed in conjunction with the company’s application for incentives” under KRS Chapter 154, which are exempt under KRS 61.878(1)(c)2.b. Similarly, the Cabinet explains that

many records are also exempt because they contain “information confidentially disclosed to the Cabinet and generally recognized as confidential or proprietary that would permit an unfair commercial advantage to competitors of the company if openly disclosed” and are exempt under KRS 61.878(1)(c)1. The Cabinet also explains that the records contained “personal identification information” exempt under KRS 61.878(1)(a) and “preliminary drafts, notes, correspondence, and memoranda of opinions and policy formulations not intended to give notice of final action of a public agency” exempt under KRS 61.878(1)(i) and (j).

Finally, the Cabinet estimates it would take roughly 566 hours to review and redact each record, assuming each email record contained only a single page. In 23-ORD-076, the Office found a public agency had met its burden of “clear and convincing evidence” that it would be unreasonably burdensome to redact 71,000 records at 20 seconds per record, for a total of 394 hours of staff time. Here, the estimated time articulated by the Cabinet to review the records is much greater than that in 23-ORD-076. *See also* 25-ORD-150; 25-ORD-042. Moreover, the Cabinet has explained that the number of responsive records identified is likely to be larger than the number identified in its initial, limited search. Accordingly, the Cabinet has met its burden of proof under KRS 61.872(6) and, therefore, did not violate the Act when it denied the Appellant’s request.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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

³ The Office notes that this decision is aligned with 25-ORD-200, in which the Office affirmed as unreasonably burdensome a similar request by the Appellant to the Cabinet that implicated fewer records that parts 2, 3, and 7 of the present request.

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Distributed to:

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