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25-ORD-219

August 14, 2025

In re: Martina Kunnecke/Louisville Metro Government

Summary: Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it delayed access to requested records for nearly three weeks without providing a detailed explanation for its delay.

Open Records Decision

On July 2, 2025, Martina Kunnecke (“Appellant”) submitted a request to Metro for “[a]ll call records” from a specific phone number to Metro “from February 1, 2025 to July 1, 2025.” The Appellant specified the scope of her request included “calls related to sites along Dixie Highway (at Barrett, Gene Snyder and Greenbelt).” The next day, Metro notified the Appellant that it needed additional time to fulfill her request because the records she requested “are in active use, storage, or not otherwise available” and that the records would be available “on or before close of business” on July 30, 2025.¹ 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). 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 Metro stated “the scope of the request is broad” and it would need to “search multiple archives for the different types of records” the Appellant is requesting. Metro further stated that “the records contain a mixture of exempt and nonexempt information” and “must be reviewed for the required redactions.” It explained that it would need to listen “to the entire audio file multiple times to ensure all required redactions are completed.”

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 that the records are "are in active use, storage, or not otherwise available"; "the scope of the request is broad"; and "must be reviewed for the required redactions." 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, simply asserting that a request is "broad," without identifying the number of records requested, the records location, or the contents of the records, does not 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 violated the Act when its initial response failed to provide a detailed explanation for the cause of delay as the Act requires.²

On appeal, Metro explains that it possesses recordings of 33 phone calls that are responsive to the Appellant's request and that it had to search among records from each day of the six-month time period identified by the Appellant to obtain copies of the calls. Specifically, Metro states that it "had to search through calls for 150 days, or 3,600 hours." However, it is not apparent that Metro's search required that it listen to all 150 days of calls.³ Metro also explains that the 33 calls, collectively, were 80 minutes long and required 160 minutes of review for exempt material before being provided to the Appellant. Again, it is not clear why 160 minutes of review necessitated a three-week extension under KRS 61.872(5). As such, Metro has not provided a detailed explanation of why it would take three weeks to obtain copies of the records and provide them to the Appellant.

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

² On appeal, Metro, states that it made the requested records available to the Appellant on July 22, 2025.

³ Indeed, the fact that Metro provided the Appellant with responsive records on July 22, the thirteenth business day after receiving the Appellant's request, suggests such a search was not necessary.

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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