



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-220

August 14, 2025

In re: Tina Burnell/Louisville Metro Government

Summary: Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it did not give a sufficiently detailed explanation of the reason for its delay under KRS 61.872(5).

Open Records Decision

On July 7, 2025, Tina Burnell (“Appellant”) submitted a request to Metro seeking certain records related to the “Food Literacy Project,” including all emails belonging to the Metro Council members and Metro Council staff related to the project. On July 15, citing KRS 61.872(5), Metro stated it would provide responsive records on August 8, 2025, because the Appellant had sought emails belong to 64 “different email accounts,” because records could be found in several different “units” of Metro, because responsive records include “paper and electronic records,” and because “legal review” was necessary to redact records “that may contain Attorney-Client Privilege, Preliminary Opinions, Preliminary Drafts, or confidential business information mixed in with non-exempt records.” This appeal followed.

Under KRS 61.880(1), a public agency has five business days to grant or deny a request for public records. 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). When determining whether a delay is reasonable, the Office has consistently considered the number of records the requester has sought, the location of the records, and the content of the records. *See, e.g.*, 22-ORD-176; 21-ORD-045; 01-ORD-140; OAG 92-117.

Here, Metro explained that the records are located in many different offices and in the email accounts of 64 individuals. Moreover, it explained that responsive records are likely to require redactions of exempt materials. However, Metro did not quantify, or provide an estimate, for the number of records implicated by the request. Nor did Metro explain why it was unable to provide such an estimate.

An explanation that neither provides an estimate of the number of records implicated nor explains why such an estimate is impossible tends not to be detailed enough to allow review of the reasonableness of the delay. This is because, without knowing the number of records implicated by a request, it may not be possible to determine whether the delay imposed by the agency is reasonable. Some delays are warranted. *See, e.g.*, 12-ORD-228 (finding a six-month delay to review over 200,000 emails was reasonable). Some delays are not. *See, e.g.*, 01-ORD-140 (finding that a delay of two weeks to produce three documents was unreasonable). Ultimately, the burden is on the agency to provide a detailed explanation of why its delay was reasonable. *See* KRS 61.880(2)(c) (placing the burden on the public agency to substantiate its actions). Thus, even if a request appears to implicate a large number of records, the Office cannot make such an assumption. The burden lies with the agency to articulate, or estimate, the number of records implicated by the request.

Accordingly, because Metro has not quantified the number of records implicated by the Appellant's request, the Office cannot find that it has provided a sufficiently detailed explanation for its three-week delay. As such, Metro's invocation of KRS 61.872(5) violated the Act.

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

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Distributed to:

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