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-227

August 25, 2025

In re: Kathy Schenck/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services ("the Cabinet") violated the Open Records Act ("the Act") when it failed to respond to a request for public records within five business days and failed to respond to portions of the request. The Office cannot find the Cabinet withheld records in violation of the Act in the absence of a *prima facie* case that additional records exist.

Open Records Decision

On April 2, 2025, Kathy Schenck ("the Appellant") submitted an electronic request for records to the Cabinet, stating, "I would like to know who has accessed our family members['] vaccine records and any demographics housed within the Kentucky Immunization Registry database. I would like to know all fields available as a query (username, date and time, which pages they visited etc)." The Appellant specified November 14, 2016, to April 2, 2025, as the date range for the records, and she provided identifying information for herself and for her two children. On April 11, 2025, the Cabinet sent a response stating that the "[r]ecords should be available . . . by the middle of next week."

Having received no further reply by April 22, 2025, the Appellant made a follow-up inquiry in the Cabinet's electronic request system, to which the Cabinet did not respond. On April 28, 2025, the Appellant sent an email inquiry to the Department for Public Health ("the Department")[1] and was told the records had been "submitted" previously. When the Appellant stated she could not see any uploaded files in the system, the Department provided her a copy of the information it had gathered previously, which was in the form of a spreadsheet. The Department noted that "this audit has limitations. It only captures events that have occurred on the record within the past six months. Any events occurring before this timeframe are archived."

[1] The Department is an organizational unit of the Cabinet. *See* KRS 12.020(II)(6)(b).

On April 29, 2025, the Appellant advised the Department by email that she considered the response "incomplete" because she believed the Cabinet had "disclosure access records for 6 years." She therefore inquired "if/when [she would] receive a completed request that includes archived records." Additionally, she stated she "would like to see all the data [she was] allowed by law to see including names and addresses of the recipients of [her and her children's] PHI." The Appellant repeated this request on May 1, 2025. On May 8, 2025, the Appellant forwarded this email correspondence to the Cabinet through the electronic request system and again requested "the full 6 years of records." Having received no response by July 28, 2025, the Appellant initiated this appeal.

On appeal, the Cabinet acknowledges it received the Appellant's original request on April 2, 2025. The Cabinet states it initially uploaded the spreadsheet containing six months of information on April 9, 2025, believing it would be released to the Appellant, but "inadvertently kept the records as an internal document," which prevented the spreadsheet from being released. Regarding the Appellant's subsequent requests for six years of records, the Cabinet states that "[n]o additional records were provided by [the Department] as they believed they adequately responded to the request." However, after receiving notice of this appeal, the Cabinet provided the Appellant records "from 2021 to the present" and stated it "does not have access to the remaining years requested."

When a public agency receives a request for public records, it must determine within five business days "whether to comply with the request [and] notify in writing the person making the request, within the five (5) day period, of its decision." KRS 61.880(1). On appeal, the Cabinet claims it "uploaded" responsive records to the Cabinet's online portal within five business days but does not deny it failed to notify the Appellant in writing before April 11, 2025, the seventh business day after receiving the request. Further, an agency may only delay the production of a record when "the public record is in active use, in storage or not otherwise available," in which case 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 will be available for inspection." KRS 61.872(5). The Cabinet's response on April 11, 2025, did not give a detailed explanation for the cause of delay, but only gave an estimate of when the records "should be available." Therefore, the Cabinet violated the Act.

Moreover, even in its subsequent response providing the spreadsheet to the Appellant, the Cabinet did not fully respond to the Appellant's request insofar as it included records more than six months old. On appeal, the Cabinet admits it possessed records dating to 2021, because it subsequently provided those to the Appellant, yet it ignored the Appellant's repeated requests for records older than six months. Although the Cabinet explains on appeal that it only possessed records

dating to 2021, it should have promptly provided those records and explained that older records did not exist. "A public agency violates KRS 61.880(1) 'if it fails to advise the requesting party whether the' records exist." *Univ. of Ky. v. Hatemi,* 636 S.W.3d 857, 873 (Ky. App. 2021) (quoting 20-ORD-010). A public agency cannot simply ignore portions of a request. *See, e.g.,* 21-ORD-090. Therefore, the Cabinet violated the Act when it failed to respond completely to the Appellant's request.[2]

In correspondence dated August 8, 2025, the Appellant claims the records provided by the Cabinet on that date "only included 2 of the 3 patients requested." She quotes what appear to be fields of information from the records, which list the names of her children with the indicator "patient_name_accessed" and list her name with the indicator "patient_name_NOT_accessed." Once a public agency states affirmatively that it has provided all responsive records, the burden shifts to the requester to present a *prima facie* case that additional records exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't,* 172 S.W.3d 333, 341 (Ky. 2005). However, it is not evident from the quoted language that any records relating to the Appellant were withheld. Rather, because the Appellant requested records of who had "accessed" her family's health information, it appears likely the designation "patient name NOT accessed" denotes there is no record that anyone accessed the Appellant's health information. Thus, the Appellant has not presented a *prima facie* case that the Cabinet's final response was incomplete. Accordingly, the Office cannot find the Cabinet withheld records in violation of the Act.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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/ James M. Herrick
James M. Herrick
Assistant Attorney General

[2] Under 40 KAR 1:030 § 6, "[i]f the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter." Here, the Cabinet claims this appeal is moot because it has now provided the responsive records it possesses. However, the Cabinet has also partially denied the request, insofar as it does not possess some of the requested records. An appeal is not moot when the requested records are not provided in their entirety. *See, e.g.,* 22-ORD-241 n.1.

#358

Distributed to:

Ms. Kathy Schenck
Natalie A. Nelson, Esq.
Peyton Sands, Esq.
Ms. Evelyn L. Miller