



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-235

August 28, 2025

In re: Melissa Bebout/City of Morganfield

Summary: The City of Morganfield (“the City”) violated the Open Records Act (“the Act”) when it failed to grant or deny a request for records within five business days and did not give a sufficiently detailed explanation of the reason for its delay under KRS 61.872(5). The City subverted the intent of the Act, within the meaning of KRS 61.880(4), when it failed to provide records by the date it represented they would be available. However, the City justified its delay on appeal.

Open Records Decision

On July 1, 2025, Melissa Bebout (“the Appellant”) submitted seven¹ multi-part requests to the City for various types of records. First, she requested several types of records relating to American Rescue Plan Act (“ARPA”) and COVID-19 relief funds. Second, she requested all text messages between the current mayor and any city council members during his time in office. Third, she requested all records relating to “fundraisers held at or by the Morganfield Fire Department” since January 1, 2016. Fourth, she requested various “records related to employment contracts and contract-related payments for [City] police officers” since January 1, 2016. Fifth, she requested “all deleted Facebook posts, comments, or messages” by the mayor or any city council members, correspondence about such messages, and “any policies regarding city officials’ use of social media” since January 1, 2015. Sixth, she requested various types of records related to opioid settlement funds since January 1, 2022. Seventh, she requested all records relating to “monetary donations, appropriations, or disbursements” to Family Resource and Youth Services Centers since January 1, 2020.

¹ Each of the Appellant’s requests was sent in a separate letter. The Appellant also sent a complaint letter on the same date regarding a fundraising matter, in which she requested the Morganfield Fire Department conduct an investigation and provide her “documentation of any internal findings and actions resulting from this complaint.” Because no such documentation could exist when no investigation had yet occurred, the Office presumes this letter is not presently at issue.

On July 7, 2025, the City replied in writing that it “require[d] additional time” to respond because the requested “documents, given their breadth and volume, will require substantial time to locate, review, redact, and produce.” Citing KRS 61.872, the City gave “July 25th as the earliest date on which all records requested should be located, reviewed, redacted and available for inspection.”

Also on July 7, 2025, the Appellant made an eighth request for “[a]ll bank statements for all city accounts,” “[a]ll city financial ledgers and general fund disbursement records,” “[c]opies of all checks or electronic payments [issued] to or on behalf of” the mayor, “receipts, invoices, or documentation submitted by [the mayor] as justification for these payments,” “[c]ouncil meeting minutes and approval records authorizing said payments,” “[c]orrespondence or internal memos discussing or referencing payments to” the mayor, and “audit reports or internal reviews [that] reference mayoral compensation or potential financial irregularities” since January 1, 2019. That same day, the City issued a letter stating it needed additional time “for the same reasons set forth” in its previous letter and again gave July 25, 2025, as the earliest date when the records would be available.

On July 15, 2025, the City informed the Appellant that it required additional time “in light of the volume of documents requested and as the City Administrator only recently returned from an out-of-town trip and has been unable to search for responsive documents.” The City gave August 15, 2025, as the earliest date when the records would be available. That same day, the Appellant requested a “detailed explanation of the cause for the projected delay,” including “[t]he types of records currently under review,” “[t]he number of responsive documents identified,” and “[t]he nature and scope of the redactions under consideration.” On July 22, 2025, the City replied that it would take “several weeks to locate [the records] given the breadth, applicable timespan and scope” of the requests and “at least two additional weeks to review [them] for responsiveness and exempt material.”² The City stated it could not answer the Appellant’s specific questions due to “the sheer volume of documents requested,” which it described as “thousands of documents.”

On July 23, 2025, the Appellant claimed that “if the City is reviewing documents in phases, [it is] required to begin rolling production immediately.” She therefore demanded, “no later than July 29, 2025[,] immediate production of all responsive documents already reviewed or available,” a “detailed timeline for review and production of each remaining [r]equest,” and a “written explanation for any specific exemptions being claimed.” On July 25, 2025, the City claimed it had already “provide[d] a detailed explanation of the reason for delay” and denied that the Act

² The City also claimed the requests “place[d] an unreasonable burden on the City” and were “intended . . . to disrupt other essential functions of the City” within the meaning of KRS 61.872(6), but nevertheless stated it would comply with the requests “to comply with its statutory obligations.”

required “a detailed inventory of files reviewed or identified, an estimated timeline (beyond that already provided)[,] a description of anticipated exemptions[,] or a rolling production of documents as they are reviewed and redacted.” The City asserted its “need for a reasonable extension [was] based on the temporal scope of the [r]equests, the breadth of documents sought, and the fact that the [r]equests seek documents held by various City offices and departments, both current and former.” This appeal followed.

Under KRS 61.880(1), a public agency has five business days to grant or deny a request for public records. Here, the City provided a timely initial response to the request, but neither granted nor denied the request at that time. 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.” In light of this provision, the Attorney General has recognized that persons requesting large volumes of records should “expect reasonable delays in records production.” 12-ORD-228. However, a vague statement about the “volume” of the request is not a “detailed explanation” under KRS 61.872(5). *See, e.g.*, 23-ORD-320; 22-ORD-164. Furthermore, in 21-ORD-045, the Office found a statement that a request implicated 5,000 records, which must be reviewed for responsiveness and possible redactions, was not a “detailed explanation.” Here, likewise, the City’s statements about the “breadth and volume” of the request, the existence of “thousands of documents,” and the need for review and redaction did not qualify as a “detailed explanation” under KRS 61.872(5). Therefore, the City’s initial response violated the Act.

The Appellant further claims the City improperly “shift[ed] deadlines without proper justification.” Under KRS 61.880(4), a person may complain to the Attorney General that “the intent of [the Act] is being subverted by an agency short of denial of inspection including but not limited to . . . excessive extensions of time.” Here, the City gave July 25, 2025, as the date by which it would make records available, but did not make any records available by that date. A public agency subverts the intent of the Act by excessive extensions of time when it fails to meet a self-imposed deadline to make records available. *See, e.g.*, 23-ORD-079; 21-ORD-011. Although the City explained on July 15, 2025, that the City Administrator had been out of town and thus unable to search for records, it did not explain the duration of his absence, whether this fact was previously known, why other persons were unable to search for records, or how the unavailability of the City Administrator for less than two weeks justified an additional delay of *three* weeks. “A public agency must ‘make proper provision for the uninterrupted processing of open records requests’ by having ‘an individual available to timely process’ those requests.” 24-ORD-039 (quoting 04-ORD-008). Therefore, the City subverted the intent of the Act by excessive extensions of time within the meaning of KRS 61.880(4).

On appeal, the City provides more detailed facts to justify its delay. Under KRS 61.880(2)(c), the public agency has the burden of proof to “substantiate the delay and that it is acting in good faith.” 21-ORD-045. Here, the City states it has identified “over 5,800 pages of responsive documents,” not including “text messages and Facebook data,” and asserts it is “working diligently to meet the August 15th production date.”³ In 12-ORD-097, the Office found a delay of six months was reasonable to review and produce 22,117 responsive records. Here, the City proposes a delay of less than six weeks (or less than 25% of six months) to review and produce over 5,800 records (or more than 25% of 22,117 records). Given the number of expansive requests the Appellant submitted simultaneously and the City’s evident good faith in responding to them, this delay is not inherently unreasonable. Therefore, the City has met its burden of proof to justify its delay in producing records.

The Appellant argues, however, that the City violated the Act by not agreeing to “partial or rolling production” of records as they are reviewed. In cases involving long delays in providing large numbers of records, the Office has considered production of records in “rolling batches” as evidence of a public agency’s good faith. *See, e.g.*, 24-ORD-249 (finding a delay of seven months to produce 39,000 records in rolling batches was justified); *but see* 21-ORD-045 (finding a delay of four months to produce 5,000 records was not justified). However, production on a “rolling” basis is not required by the Act.⁴ Therefore, the City did not violate the Act when it did not agree to production of records in batches.⁵

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

³ Although the August 15 date has subsequently passed, the Office has received no further updates from the parties as to whether all records were provided.

⁴ Ultimately, it is the requester who controls the number of requests submitted at the same time and the scope and complexity of those requests. Therefore, one way for the Appellant to obtain the “rolling” production she desires would be to submit her requests one at a time and allow the City to respond accordingly.

⁵ The Appellant also claims the City improperly used “rhetoric that may be construed as retaliatory or chilling to lawful public oversight” when it stated her requests were unreasonably burdensome or intended to disrupt other essential functions of the City. The City evidently made those statements to suggest it could have denied the Appellant’s requests under KRS 61.872(6), which allows a records custodian to deny a request if it “places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency.” But the City has not expressly invoked KRS 61.872(6), and has attempted to comply with the Appellant’s requests. While KRS 61.880(2) authorizes the Attorney General to determine whether an agency violated the Act, it does not create jurisdiction over a claim of retaliation. *See, e.g.*, 25-ORD-182 n.3; 17-ORD-067. Therefore, the Appellant’s allegations are outside the scope of this appeal.

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

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Distributed to:

Ms. Melissa Bebout
Carol Schureck Petitt, Esq.
Mr. Scott Clements