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25-ORD-244

September 4, 2025

In re: Jeff Sullivan/University of Kentucky

Summary: The University of Kentucky ("the University") 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). The University subverted the intent of the Act by delaying access to records when the Appellant did not agree to narrow his request.

Open Records Decision

On April 16, 2025, Jeff Sullivan ("Appellant") submitted a 15-part request to the University seeking records related to his previous employment with the University. That request sought, in part, all emails between the Appellant and two named individuals between 2022 and 2024, emails or Microsoft Teams messages between the Appellant and another named individual for the same time period, text messages between the Appellant and another named individual, and all emails sent from a non-University email address to the University email addresses assigned to the Appellant and another individual.[1]

On April 21, the University responded by stating that "the records were "in active use, in storage or not otherwise available" and that, pursuant to KRS 61.872(5), the University will "either fully respond or advise you of when the University will have a response within thirty days." Later that same day, the University requested that the Appellant confirm whether the dates it identified in the requests for communications were correct and asked that he provide "key terms" for the University to search for with respect to his request for email communications. On May 20, the University again asked the Appellant to provide key terms for his email requests, and the Appellant both provided key terms and confirmed the date range relevant to his request.

[1] The remaining subparts of the request sought specific documents from the University.

Then, on May 22, the Appellant submitted two new requests for various communications between himself and four named University employees. In response, on June 2, the University stated the records are "in active use, in storage or not otherwise available pursuant to KRS 61.872(5)" and that it would require 30 days "to (1) gather records that are potentially responsive; (2) evaluate those documents to determine if the records are responsive; (3) determine if the responsive documents are exempt; and (4) if the documents are exempt[,] redact the exempt materials." The University then instructed the Appellant to again provide search terms relevant to his request. In response, the Appellant stated he had identified the individuals who sent or received the requested emails and a date range. 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, the University's final response did not provide a detailed explanation for why the Appellant's request could not be completed within five business days. Instead, it merely explained that the records must be gathered, evaluated, reviewed, and redacted. The Office has previously held that such a response is not sufficiently detailed because "the Act contemplates that all those actions should be completed within five business days for every request, unless KRS 61.872(5) applies." 25-ORD-076.

When a person requests copies of public records under the Act, "[t]he public agency shall mail copies of the public records to a person . . . after he or she *precisely describes* the public records which are readily available within the public agency." KRS 61.872(3)(b) (emphasis added). A request that does not precisely describe the records "places an unreasonable burden on the agency to produce often incalculable numbers of widely dispersed and ill-defined public records." 99-ORD-14. A request which does not precisely describe the records sought may be denied on that basis. Similarly, 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."

When faced with a request that does not precisely describe the records sought, or which places an unreasonable burden on it, an agency does not violate the Act by inviting the requester to narrow his or her request. However, if the requester declines to narrow his or her request (or ignores the agency's request to narrow it), the agency must accept that refusal and otherwise comply with KRS 61.880(1) by granting or denying the request within five business days, citing any exemptions that authorize any denial or redaction of responsive records, and explaining how those exemptions apply to the records. *See, e.g.* 22-ORD-213 (finding a request need not be narrowed by search terms when it sufficiently describes the requested records). A requester's refusal to narrow his or her request is neither grounds for delaying a response to a request nor a reason for denying that request.[2]

Here, the University invited the Appellant to narrow his requests for emails by including keywords to be used as search terms. When the Appellant did not respond to that request and later declined to provide keywords, the University did not timely grant or deny his request. Instead, the University advised that the Appellant needed "to provide search terms for the emails being requested, so our IT department can complete a thorough search." A requester who believes an agency's delay is unreasonable may seek the Attorney General's review by alleging the agency subverted the intent of the Act through "delay past the five (5) day period described in [KRS 61.880(1)]." KRS 61.880(4). Here, the Appellant submitted his requests on April 16 and May 22, but his requests still had not been granted or denied by June 23, 2025, because the Appellant had not supplied keywords for every subpart of his requests for emails.[3] Therefore, the University subverted the intent of the Act, within the meaning if KRS 61.880(4), when it unreasonably delayed access to records beyond the five-day period under KRS 61.880(1).

Regarding its invocation of KRS 61.872(5), the University advances a novel argument for why its response was sufficient under the Act. Pointing out that the Act does not require "clear and convincing evidence" but instead requires a "detailed explanation" of the cause of delay, the University reasons it need only "explain the process of gathering, evaluating, determining exemptions, and redacting will take more than five business days, and provide an anticipated date of compliance" if "it has a good faith basis for believing a request cannot be fulfilled within five business

[2] Of course, if the unnarrowed request is unreasonably burdensome, *see* KRS 61.872(6), or does not precisely describe the records sought, *see* KRS 61.872(3)(b), it may be denied on those grounds.

[3] The University did not explain its delay in responding to the subparts of the request that did not seek emails or for which the Appellant did supply keywords.

days."[4] The University further states that "[n]othing in the statutory text requires the agency to identify what specific records or how many records are in active use, in storage, or otherwise unavailable." Regarding the University's description of what constitutes a "detailed explanation," the Office disagrees.

To start, the Office looks first to the text of the Act. KRS 61.872(5) authorizes an agency to extend its time to respond if the records are "in active use, in storage or not otherwise available," but requires the agency to provide "a detailed explanation of the cause . . . for further delay." KRS 61.872(5). At all times, a public agency must substantiate the need for any delay and that it is acting in good faith. *See* KRS 61.880(2)(c) (placing the burden on the public agency to substantiate its actions). Thus, in reviewing an agency's invocation of KRS 61.872(5), the Office must look to the agency's "detailed explanation" and determine whether the agency adequately explained the cause for further delay.

The University argues that it need only explain that the records must be gathered, evaluated, reviewed, and redacted if it has a good faith reason for its belief that fulfilling the request will take longer than five business days. But the University does not believe that it must articulate the "good faith basis" for its delay. Simply put, such a response fails to adequately explain the basis of the delay such that either the requester or the Office can judge the reasonableness of the stated delay. Rather, such a response—which only restates the basic requirements of the Act—would universally apply to all requests for records, regardless of the scope of records actually implicated. A "detailed explanation" under KRS 61.872(5) should not consist of "boilerplate language that [is] in no way correlated to [the] particular request." 11-ORD-135. Simply put, a response that would apply equally to any request for records is not sufficiently detailed to explain the cause for a particular delay for producing particular records. But here, that is the only explanation the University offered.

Regarding the University's assertion that the Act does not require it to provide an estimate of the number of records that are responsive, the University is correct insofar as that is not an explicit requirement of the Act. However, what the Act does require is for the explanation of the delay to be detailed, and the Office has

[4] The University then lists factors that it asserts would support its "good-faith" delay: (1) "The Need to Use the Information Technology Department"; (2) "The Need to Search for Records in Multiple Departments"; (3) "The Need to Exclude Privileged Materials"; (4) "The Need to Address Education Records Under the Federal Family Education Records and Privacy Act"; (5) "The Need to Address the Personal Privacy Exemption"; (6) The Need to Determine Whether an Otherwise Exempt Record Relates to an Employee/Applicant and, If So, To Redact Material Unrelated to the Employee Applicant"; and (7) "The Need to Process Other Requests."

consistently considered the number of the records, the location of the records, and the content of the records when reviewing an agency's proffered explanation. *See, e.g.*, 21-ORD-045; 01-ORD-140; OAG 92-117. Further, the fact that an agency must invoke KRS 61.872(5) within five business days of receiving the request, and that it must pick the earliest date records will be available and explain why it chose that date, indicates that the agency should have completed its search by the fifth business day. Or, at the very least, that the agency has begun its search and the search has already implicated so many records that the agency then knows that it cannot comply with the request within five business days. At such point, the agency should be able to quantify, or provide an estimate, of the number of records implicated by the request, or at least provide an explanation for why it was unable to provide such an estimate.[5] A detailed 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 e-mails 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 number of records is the factor that most directly informs whether a delay is warranted or not.

At bottom, the University has not met its burden under KRS 61.872(5) to provide a detailed explanation for its 30-day delay in responding to the Appellant's request. A response that simply restates the Act's basic requirements would apply equally to all possible requests.[6] A response that does not explain why this *particular* request requires a delay is not sufficiently detailed. Accordingly, the University 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

[5] For example, if records are not kept in electronic form and must be manually searched, it may take more than five business days to physically locate such records and manually count them. Electronic searches, however, tend to provide a number of files responsive to the query.

[6] On appeal, the University states that "it is clear from the face of the request that processing will take more than five business days." This very well may be true. But the burden is on the University to substantiate its delay. *See* KRS 61.880(2)(c).

any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

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/s/ Zachary M. Zimmerer
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Distributed to:

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