



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-246

September 4, 2025

In re: Laurel Swanz/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).

Open Records Decision

On June 19, 2025, Laurel Swanz (“Appellant”) submitted a request to the University seeking the “complete personnel files”¹ of two named individuals and any “[r]ecords of any investigation concerning” those same individuals. On June 23, 2025, the University stated that the records were “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.” 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 original response did not provide a detailed explanation for why the Appellant’s request could not be completed within

¹ The Appellant specified that responsive records include “records documenting a change in the employee’s employment status, roles, or compensation and the reasons therefore.”

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.

On appeal, 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 days.”² 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

² 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.”

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 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.³ 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.

³ 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.

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. 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 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

#293

Distributed to:

Laurel Swanz

Amy R. Spagnuolo, Principal Paralegal/Director of Open Records, Office of Legal Counsel, University of Kentucky

William Thro, General Counsel, University of Kentucky