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25-ORD-264

September 19, 2025

In re: Lori Davenport/City of Ludlow

Summary: The City of Ludlow ("the City") violated the Open Records Act ("the Act") when it denied the Appellant's request for records under KRS 61.872(6). The City did not violate the Act when it did not provide records it does not possess.

Open Records Decision

Between May 30 and August 4, 2025, Lori Davenport ("Appellant") submitted six records requests to the City. The City timely responded to each request, either granting the request, stating that no records exist, or denying the request in whole or in part.

On May 30, the Appellant requested all of a specific City employee's "job evaluations" created since 2016. In response, the City stated it did not possess any responsive records. The Appellant challenged this denial, alleging that "[i]t is not reasonable to believe that no performance evaluations exist for this individual."

On June 29, the Appellant requested all communications between a particular City employee and three named City employees or any other city employee that mentioned the Appellant, which were sent between July 1 and December 31, 2024. In response, the City provided the Appellant with 17 responsive records, which it stated were all the responsive records it possessed. The Appellant challenges this response by stating that she does "not believe all relevant documents were provided."

On July 8, the Appellant requested all records of communications or meeting notes between a particular City employee and any City employee or Kenton County employee that mentioned her and were sent between January 1 and June 30, 2024. In response, the City provided the Appellant with 54 pages of responsive records. The Appellant challenges this response by stating that she does "not believe all relevant documents were provided."

On July 16, the Appellant submitted a two-part request. The first part sought text messages or other records of communications between a particular City employee and any other City employee. The second part sought emails between a particular City employee and any other City employee that mentioned the Appellant and were sent in 2025. In response, the City denied the first part of the request as unreasonably burdensome under KRS 61.872(6) and stated that it would be providing all non-exempt records that were responsive to the second part. The Appellant challenges this response by stating that she does "not believe all relevant documents were provided."[1]

On July 18, the Appellant requested "Contracts between the City" community center and "The Bingo Crew." In response, the City stated it does not possess any records responsive to the request, explaining that "The Bingo Crew" is the name of general programming at the community center and is not an organization with contracting power. The Appellant challenges this response by stating that she does "not believe all relevant documents were provided."

On August 4, the Appellant requested all records of communications or meeting notes between a particular City employee and any other City employee that were sent between January 1 and June 30, 2024. In response, the City denied the request as unreasonably burdensome under KRS 61.872(6). The Appellant challenges this response by stating that she does "not believe all relevant documents were provided."

This appeal, challenging each of the City's responses, followed. The Appellant alleges that she should have received additional records in response to each request.

The City maintains that it does not possess any records beyond those already provided to the Appellant. Once a public agency states affirmatively that it does not possess any additional records, the burden shifts to the requester to make a *prima facie* case that additional records do exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that additional records do or should exist, "then the agency may also be called upon to prove that its search was adequate." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). To support a claim that the agency possesses responsive records that it did not provide, the Appellant must produce some evidence that calls into doubt the adequacy of the agency's search. *See, e.g.*, 95-ORD-96.

[1] Regarding this portion of her appeal, the Appellant urged the Office to speak with two City employees whose records would be responsive to the second part of the request. Because that instruction was related to the second part of the request, and because this request was partially granted, the Office construes the Appellant's appeal as alleging an incomplete production of records in response to the second part of her July 16 request.

Regarding her request for performance evaluations, the Appellant has provided the Office with a copy of the City's personnel policies and directs the Office's attention to the section regarding performance evaluations. That section says that "all workers will be evaluated in writing" after six months of employment, and then annually thereafter. However, the City has explained that it "does not conduct 'performance evaluations.'" Thus, to the extent that the Appellant may have made a *prima facie* case that performance evaluation records should have existed, the City has rebutted that presumption by explaining that the records were never created.

Moreover, even if the City had not rebutted the Appellant's *prima facie* case, it appears that it has conducted an adequate search for records. An adequate search for records is one using methods reasonably designed to find responsive records. *See, e.g.*, 95-ORD-096. Reasonable search methods include reviewing the files pertaining to the general subject matter of the request and the files of employees either specifically mentioned in the request or whose job duties are related to the subject matter of the request. *See, e.g.*, 19-ORD-198. To carry its burden of explaining how its search was adequate, an agency must, at a minimum, specifically describe the types of files or identify the employees whose files were searched. *See id.* The City explains that it has searched the personnel file of the individual identified by the Appellant and no responsive records were located. The personnel policy provided by the Appellant states that evaluations will be "placed in the personnel file" of the reviewed worker. Thus, by explaining that it searched for responsive records in the location the City's personnel policy states the records should be stored, the City has explained that its search was adequate under the Act. Thus, the City did not violate the Act when it did not provide the Appellant with the requested performance evaluations.

Regarding her remaining requests, the Appellant has not made a *prima facie* case that the City possesses additional records responsive to any of the Appellant's requests. Instead, she states her belief that not all the documents were provided, or she urges the Office to speak with particular individuals about particular records. A requester's bare assertion that additional records exist does not make a *prima facie* case that the agency possesses additional responsive records. *See, e.g.*, 23-ORD-042. As such, the Appellant's expressed belief that more records exist does not make a *prima facie* case that they do. Moreover, the Office is not authorized to investigate alleged violations of the Act. *See Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 868 n.8 (Ky. App. 2021) ("[T]he [Office] is not empowered to investigate in order to locate documents which the requesting party maintains exist, but which the public agency states do not exist." (quoting 93-ORD-10)). Accordingly, the City did not violate the Act when it did not provide records it does not possess.

Regarding the Appellant's August 4 request, the City did not advise that it does not possess responsive records. Rather, it denied that request as being

unreasonably burdensome and intended to harass. KRS 61.872(6) contains two separate but interrelated grounds to deny a request. The more commonly asserted of the two grounds applies when "*the application* places an unreasonable burden in producing records." *Id*. (emphasis added). This portion of KRS 61.872(6) is specific to the request, or "application," if it alone places an unreasonable burden on the agency. In making such a determination, the Office considers the number of records the request implicates, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction. *See, e.g.,* 97-ORD088 (a request implicating thousands of physical files stored in several locations throughout the state and each file needed to be reviewed for redactions pursuant to state and federal law was unreasonably burdensome). An agency can also establish an unreasonable burden if it does not catalog its records in such a manner that they can be searched using a keyword. *See, e.g.,* 96-ORD-042 (unreasonable burden found where the agency thousands of files needed to be reviewed to determine if the records were responsive to the keywords in the request).

Regarding the burden imposed by the request, the City states the City employee in possession of the requested records stated that "the number of records which might be responsive to this Request . . . was more than he could reasonably review and provide." Although the number of records at issue is not the only factor the Office considers, it is the most important one. *See, e.g.*, 22-ORD-182. Here, the City has neither stated nor estimated the number of records implicated by the August 4 request, nor has it described the exemptions that might necessitate extensive review of the request. The agency must provide clear and convincing evidence of the burden, which requires it to search for records in the first instance to quantify, or in good faith estimate, the number of potentially responsive records. *See, e.g.*, 23-ORD-024. The City has not done so here and, therefore, has not established that the August 4 request places an unreasonable burden on it.

The City also claims the August 4 request is "intended to harass." The Office interprets this denial as an assertion that the Appellant intends to disrupt its other essential functions, which is the second basis on which an agency may invoke KRS 61.872(6). To determine whether a request is "intended" to disrupt the essential functions of an agency, the Office considers different factors than those described above. This exemption requires the agency to provide evidence of factors separate from the request itself, because the official custodian must have "reason to believe" the requester's "intent" is not to inspect records, but to cause disruption. *Id*. Instead of considering the number of records implicated, the Office will consider the number of requests the requester has made close in time to each other. More requests made over a shorter time may constitute *some* evidence of an intent to disrupt, but it alone is not clear and convincing evidence of such intent. *See, e.g.*, 15-ORD-015; 96-ORD-

193. The agency must also provide other evidence to support its belief of the requester's intent, such as proof the requester has failed to retrieve or pay for copies of records, or statements from the requester indicating malicious intent. For example, the requester in 15-ORD-015 offered to stop making requests for records in exchange for money. Evidence a requester stated he intends to disrupt an agency's functions because of some other grievance with the agency would also constitute appropriate evidence to support denial under KRS 61.872(6).

Here, the City points to the many requests it had received from the Appellant—15 requests since May 2025—as the basis of its assertion that the Appellant's "requests are intended to serve as harassment for City employees with whom [she] ha[s] political disagreements" and that she is "using these requests as a tool to harass [two] individuals." Given the "intent" element of KRS 61.872(6) as used in this context, there may be instances in which repeated requests submitted over a short period of time, seeking broad swaths of records, may be sufficient proof of intent to disrupt the agency's essential functions. *See, e.g.*, 23-ORD-039. But here, it is not apparent that 15 requests submitted over at least three months is sufficient to establish an intent to disrupt the agency's essential functions. To start, as demonstrated by the requests on appeal, not all the requests submitted by the Appellant between May and July seek a "broad swath" of records. Further, the Act requires that agencies grant or deny a request within five business days. *See* KRS 61.880(1). Submitting roughly one request per five business days, even if done over an extended period time, standing alone, is not clear and convincing evidence of an intent to disrupt the City's essential functions.[2] Indeed, there is no other evidence in this record of malicious intent by the Appellant, such as a pattern of failing to retrieve records, a history of making unreasonable and extraneous demands in exchange for ceasing requests, or statements she has made demonstrating a specific intent to cause disruption. Accordingly, the City has not provided clear and convincing evidence to support its denial under KRS 61.872(6).

Accordingly, the City violated the Act when it denied the Appellant's August 4 request under KRS 61.872(6).

[2] Moreover, the City provided the Office with a copy of one of the Appellant's earliest requests, which did seek a broad swath of records created over several years and which the City denied as unreasonably burdensome. The record on appeal indicates that after receiving that denial, the Appellant opted to submit a series of narrowed requests seeking the same records. Because the Appellant submitted her series of requests over the course of several months, the Office declines to conclude that this is evidence of an intent to disrupt.

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
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Distributed to:

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