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25-ORD-267

September 19, 2025

In re: Melissa Bebout/City of Morganfield

Summary: The City of Morganfield ("the City") violated the Open Records Act ("the Act") when it denied a request for records under KRS 61.872(6) without proving by clear and convincing evidence that the request placed an unreasonable burden on the agency or that repeated requests were intended to disrupt other essential functions of the City.

Open Records Decision

On August 18, 2025, Melissa Bebout ("the Appellant") submitted a request to the City for "[c]opies of any and all contracts, agreement, or memoranda of understanding that have been terminated, cancelled, or rescinded by the Mayor of Morganfield from January 1, 2019, to the present"; any related "notices of cancellation or termination issued by the Mayor or city staff on his behalf"; "any City Council minutes, ordinances, or resolutions authorizing, approving, or ratifying the cancellation or termination of the contracts"; and "[a]ny correspondence, emails, or memos between the Mayor, city staff, or City Council members regarding such cancellations." She specified that her request included "all [City] departments, including but not limited to Police, Fire, Gas, Water, Sewer, and Administration."

The City denied the request under KRS 61.872(6), claiming the Appellant's "continued and repeated Open Records Requests to the City place an unreasonable burden on the City in producing the records" and "the City has reason to believe that [her] repeated requests are intended to disrupt its other essential functions." As evidence, the City stated the Appellant had submitted twelve requests since July 1, 2025, and the City had already responded to the previous eleven. The City asserted its responses had required "an estimated 75-85 hours" of staff time to review "over 6,000 pages of documents," as well as "over 100 hours" of the City Attorney's time at a cost of "over $15,000.00 in legal fees." The City further stated the Appellant's requests had "put the City behind on regular day-to-day operations, as well as taking time away from two major projects the City is working on downtown." Additionally,

the City complained of "a nearly endless barrage of emails demanding additional information," "continued demands for 'clarification' and additional records," and "meritless Appeals to the Attorney General." This appeal followed.

Under KRS 61.872(6), "[i]f the application 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, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence." The "clear and convincing evidence" standard is a difficult threshold for an agency to meet, as it "requires the party with the burden of proof to produce evidence substantially more persuasive than a preponderance of evidence, but not beyond a reasonable doubt." *Fitch v. Burns,* 782 S.W.2d 618, 622 (Ky. 1989). Thus, the trier of fact "must be persuaded that the truth of the contention is 'highly probable.'" *Id.* (quoting *McCormick on Evidence* § 340(b), at 796 (2d ed. 1972)).

As the courts have noted, "the obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Commonwealth v. Chestnut,* 250 S.W.3d 655, 665 (Ky. 2008). "When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction." 22-ORD-221. Furthermore, "the burden is determined based on the nature of the *pending* request," without reference to the volume of past requests submitted by the same individual. 25-ORD-064 (emphasis added). Here, the City provides no information about the number of records implicated by the *pending* request, the format of those records, or whether they contain exempt material requiring redaction. Thus, there is no evidence of the burden imposed by the request currently at issue. And "the Appellant's past requests, which have already been completed, do not add to that burden." 25-ORD-064.[1] Accordingly, the City has not shown that the Appellant's request constitutes an unreasonable burden under KRS 61.872(6).

As for the City's contention that the Appellant's "repeated requests are intended to disrupt other essential functions of the public agency," this claim is likewise subject to the "clear and convincing evidence" standard under KRS 61.872(6). The public policy underlying the Act "is that free and open examination of public records is in the public interest[,] even though such examination may cause inconvenience or embarrassment to public officials or others." KRS 61.871. Thus, a "person requesting to inspect public records does not have to state any reason as to why he wants to see those records [and] does not have to show or establish any

[1] By contrast, a "large number of *simultaneous* requests from one individual [may] cumulatively constitute an unreasonable burden." 25-ORD-064 (emphasis in original).

particular interest in the subject matter of those records." OAG 89-79. Rather, "the purpose of disclosure focuses on the citizens' right to be informed as to what their government is doing." *Zink v. Commonwealth, Dep't of Workers' Claims,* 902 S.W.2d 825, 829 (Ky. App. 1994). Therefore, "[o]nly when an agency has good reason to believe that a request is made *only* for the ulterior motive of disrupting the operation of the [agency], and in addition to so believing, has clear and convincing evidence that such is the case, may it deny inspection" under KRS 61.872(6). OAG 81-198 (emphasis added).

In 96-ORD-193, the Office noted the Act places "no limitation on the number of requests . . . an applicant can submit," but stated "there is certainly a point at which the applicant's repeated use of the law becomes an abuse of the law within the contemplation of KRS 61.872(6)." Although it is difficult for an agency to prove by clear and convincing evidence that a requester solely intends to disrupt its essential functions, it is not impossible. For example, in 02-ORD-230, intent to disrupt was established by a broadly worded request ("ALL Richmond District Court Facilities Corporate Records"), coupled with an extensive history of failure to retrieve requested records and a criminal conviction for harassing communications directed to city employees. Similarly, in 05-ORD-121, the Office found intent to disrupt when an individual made an "overly broad and blanket [request] for previously requested and provided records" and had established a prior "pattern of conduct" in which he requested "voluminous documents [and] either did not inspect the records or inspected only a small portion of them." In 22-ORD-048, intent to disrupt was proven by a requester's repeated failure to retrieve records and requesting copies of all city ordinances, which he knew were temporarily not in the city's possession due to an ongoing digitization process. In 15-ORD-015, intent to disrupt was found when a requester had repeatedly failed to pay for copies of voluminous records in a timely manner and demanded the agency pay him $500,000 to stop submitting requests. But outside such "extreme and abusive circumstances[,] it is the legislative intent that public employees exercise patience and long-suffering in making public records available for public inspection." OAG 77-151.

Here, as evidence of intent to disrupt, the City points out that the Appellant submitted twelve requests within a period of seven weeks, which involved "over 6,000 pages of records" pertaining to a variety of unrelated topics,[2] and later sought "clarification" of the City's responses, requiring "between 175-185 hours" of time spent by the mayor, city administrator, and city attorney and over $15,000.00 in legal fees. However, the Office has previously found that 15 requests submitted in a six-day period did not constitute clear and convincing evidence that the requester intended to disrupt other essential functions of the agency. *See* OAG 89-79; *see also*

[2] As described by the City, the Appellant's requests have "range[d] in topic from deleted Facebook data to bank statements to information on Fire Department fundraisers." Eight of the Appellant's requests are described more fully in 25-ORD-235.

25-ORD-264 (finding that 15 requests submitted over at least three months was not clear and convincing evidence of an intent to disrupt other essential functions of the agency). Furthermore, it is an "obvious fact that complying with an open records request will consume both time and manpower." *Chestnut,* 250 S.W.3d at 665. Moreover, the fact that the Appellant's requests do not relate to one single topic does not prove the Appellant intends solely to disrupt City functions, rather than to "be informed as to what [her] government is doing." *Zink,* 902 S.W.2d at 829.

The City additionally provides evidence that the Appellant's requests have in fact "delayed essential City functions" by placing the city administrator behind schedule on regular operations and taking time away from two unspecified "major projects the City is working on downtown." However, this proves only that some City functions have been delayed by compliance with the Appellant's requests. Every response by an agency to an open records request necessarily results in the opportunity cost of time and resources being diverted from other government functions. But compliance with the Act is a statutory duty of every public agency. The mere fact that other essential functions of the City have, to some degree, been delayed or compromised by its compliance with the Act does not prove by clear and convincing evidence that disruption of those functions was the Appellant's sole intent in making her requests.

Finally, the City points to a Facebook post in which the Appellant accurately described the Office's decision in 25-ORD-235 as having determined that the City "violated the Open Records Act and subverted the intent of the law." The City claims this post is a "mischaracterization" of the decision, which "demonstrates that her intent in submitting multiple Open Records Requests is only to disrupt essential City functions and serve some private vendetta." It is not clear in what respect the City believes the Appellant's post mischaracterizes the Office's decision. But the fact that a requester "has been a critic of" a public agency, 05-ORD-152, or pursues legal action against the agency, *see* OAG 89-79, is not clear and convincing evidence of an intent to disrupt the agency's essential functions.

In the Office's prior decisions in which a public agency demonstrated by clear and convincing evidence that a requester intended to disrupt essential functions of a public agency, certain common factors can be found. In general, the requesters have exhibited a previous pattern of failure to retrieve, inspect, or pay for voluminous records after requesting them, coupled with clearly harassing behavior or repeated requests for the same records. This appeal does not present the same type of evidence found in 22-ORD-048, 15-ORD-015, 05-ORD-121, or 02-ORD-230. Accordingly, the Office cannot find that the City has sustained, by clear and convincing evidence, its claim that the Appellant's "requests are intended to disrupt other essential functions of the public agency" within the meaning of KRS 61.872(6). Therefore, the City violated the Act when it denied the Appellant's request.

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
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/s/ James M. Herrick
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Distributed to:

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