



COMMONWEALTH OF KENTUCKY
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25-ORD-283

September 26, 2025

In re: Kenneth Cooke/University of Kentucky

Summary: The University of Kentucky (“the University”) violated the Open Records Act (“the Act”) when it failed to either grant or deny all parts of the Appellant’s request.

Open Records Decision

On August 6, 2025, Kenneth Cooke (“Appellant”) submitted a five-part request to the University seeking to review “Stormwater Pollution Prevention Plans and Compliance records” related to certain ongoing construction. Specifically, the Appellant sought to review (1) “Stormwater Pollution Prevention Plans, including Erosion and Sediment Control Plans,” (2) “Weekly and Post Storm Event inspection records filed by the required on-site inspector,” (3) inspection reports or notices the University received from the Kentucky Division of Water regarding “erosion and sediment control practices” in the construction area from August 1, 2024, to the date of the request, (4) inspection reports, notices, or emails the University received from the Lexington–Fayette Urban County Government regarding “erosion and sediment control practices” in the construction area from August 1, 2024, to the date of the request, and (5) written communications or emails between the University and “Construction Contractors” related to “erosion and sediment control compliance” from August 1, 2024, to the date of the request.

In its August 20, 2025, response, the University stated that the Appellant had narrowed his request to the first two parts of the request. The University denied those parts of the request because they do not seek public records, as defined by KRS 61.870(2), explaining that the records are not in the physical possession of the University. This appeal followed.

Regarding the first portion of the Appellant's appeal, the University has made the records that are responsive to the first two parts of his request available to the Appellant for inspection. As such, any dispute regarding that portion of the Appellant's request is now moot. *See* 40 KAR 1:030 § 6.¹

When a public agency receives a request to inspect records, that agency must decide within five business days "whether to comply with the request" and notify the requester "of its decision." KRS 61.880(1). A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090.

According to the Appellant, the University incorrectly stated that he had narrowed his request to only the first two of its subparts. In response, the University quotes the text of an email from the Appellant, which followed the University's statement that it was delaying access to records. The Appellant's email stated, "If we can adjust our request for better efficiency, please advise," and that "Key records of interest are the current Storm Water Pollution Prevention Plans (SWPPP) which includes Erosion and Sediment Control Plans, and the weekly inspection reports made by the Notice of Intent Permittee required by Kentucky Pollutant Discharge and Elimination Program Permit KYR-10." According to the University, this description of certain records as "Key records of interest" "clearly and unambiguously indicate[d]" the Appellant's intent to narrow "the scope of his request."

The Office disagrees. Rather, it appears that, after receiving notice that his access to records would be delayed, the Appellant identified the records he would like to be prioritized to facilitate earlier access. Simply put, the Office does not agree that a statement that certain parts of the request should be prioritized is the same as a statement that other parts of the request have been withdrawn. Because the Appellant did not withdraw any part of his August 6 request, the Act required the University to either grant or deny each part of the request, which it did not do.

¹ In response, the Appellant does not dispute that the records he sought to review were made available. Instead, he asserts that the issue is not moot because the University subverted the Act, within the meaning of KRS 61.880(4), by inadequately invoking KRS 61.872(5) to delay the Appellant's access to records. *See, e.g.*, 25-ORD-203 (finding "a claim of subversion under KRS 61.880(4) is not rendered moot when the agency provides the records in an untimely manner"). However, the Appellant has not provided the Office with a copy of the University's response stating it was delaying his access to records, nor did he assert such a challenge when he initiated this appeal. Under KRS 61.880(2)(a), a person seeking the Attorney General's review of a denial of a request to inspect records must provide copies of both his original request and the agency's response. Because the Appellant did not provide the Office with the University's response delaying access to records, the Office lacks jurisdiction to consider the Appellant's subversion complaint. Because this portion of the appeal concerned only the Appellant's access to certain records, and because those records have been made available to the Appellant, this portion of the appeal is moot.

Accordingly, the University violated the Act when it failed to grant or deny all subparts of the Appellant's request.²

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

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Distributed to:

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² After this appeal was initiated, the University issued a supplemental response to the Appellant's August 6 request. The merits of that supplemental response are not at issue in this appeal.