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25-ORD-307

October 14, 2025

In re: Alex Gaddis/Transportation Cabinet

Summary: The Transportation Cabinet (“the Cabinet”) violated the Open Records Act (“the Act”) when it failed to respond to requests for records within five business days and when it improperly denied portions of a request as unreasonably burdensome under KRS 61.872(6). The Cabinet subverted the intent of the Act, within the meaning of KRS 61.880(4), by excessive extensions of time.

Open Records Decision

This appeal concerns two separate requests submitted to the Cabinet by Alex Gaddis (“the Appellant”). On June 24, 2025, the Appellant submitted a multi-part request by email for “[a]ll communications, correspondence, emails, memoranda, and documents that reference, mention, identify, or relate to William D. Otto Spence from January 1, 2015, to present”; “[a]ll communications between any Department [of Highways] personnel and [the Kentucky Real Estate Appraisers Board] or its representatives from January 1, 2015, to present”; “[a]ll non-confidential records relating to Dean M. Loy’s employment with the Department”; [a]ll records relating to attendance by Dean M. Loy or other Department personnel at professional meetings, conferences, or events involving real estate appraisers from January 1, 2020, to present”; “[a]ll written Department policies, procedures, manuals, or guidelines that address” certain specified topics; “[a]ll non-privileged records identifying eminent domain cases where William D. Otto Spence provided appraisal services or expert testimony adverse to the Department’s position from January 1, 2015, to present”; [a]ll communications between Dean M. Loy and licensed real estate appraisers from January 1, 2020, to present, excluding communications made solely for obtaining appraisal services for Department projects”; and “[a]ll documents evidencing research, investigation, or information-gathering regarding William D. Otto Spence’s professional background, licensing status, or past testimony.” The Cabinet acknowledged receipt of this request on June 25, 2025.

On July 8, 2025, nine business days after receipt of the request, the Cabinet stated it was “still working with several offices within the Cabinet to compile records” and “require[d] 10 additional days,” to which the Appellant agreed. Having received no further communication from the Cabinet as of August 1, 2025, the Appellant inquired as to the status of his request. On August 5, 2025, having again received no response, the Appellant made a “demand for immediate compliance.”

On August 13, 2025, the Cabinet responded to the Appellant’s request, providing some records but specifically denying the request for “communications” to the extent it included “emails and attachments.” The Cabinet claimed it had “located 158.737 MB of records being email communications and attachments potentially responsive to the request,” which it considered “too large a search result to review.” Therefore, the Cabinet withheld all emails and attachments on the grounds that the volume of records posed an “unreasonable burden” under KRS 61.872(6). Although the Cabinet expressly refused to review the emails and attachments, it also claimed those communications contained some records that would be exempt under KRS 61.878(1)(l) as attorney-client privileged communications; records relating to an “ongoing acquisition and condemnation proceeding” exempt under KRS 61.878(1)(c) and KRS 61.878(1)(j); “preliminary drafts, notes, [and] correspondence with private individuals” exempt under KRS 61.878(1)(i); and “preliminary recommendation, and preliminary memoranda in which opinions are expressed or policies formulated or recommended” exempt under KRS 61.878(1)(j). 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.” Here, the Cabinet issued no response within five business days, other than a brief acknowledgment of receipt. Further, an agency does not give a “detailed explanation” when it merely states the records are being gathered. *See, e.g.,* 25-ORD-169. Therefore, because the Cabinet did not respond within five business days and did not properly invoke KRS 61.872(5) to justify its delay, it violated the Act.

Under KRS 61.880(4), a person may complain to the Attorney General that “the intent of [the Act] is being subverted by an agency short of denial of inspection including but not limited to . . . delay past the five (5) day period described in [KRS 61.880(1) or] excessive extensions of time.” Here, the Cabinet stated it needed “10 additional days” from July 8, 2025, to provide records. Assuming this meant 10 business days, the Cabinet should have provided records by July 22, 2025, but it did not make any records available or otherwise contact the Appellant by that date. A public agency subverts the intent of the Act by excessive extensions of time when it fails to meet a self-imposed deadline to make records available. *See, e.g.,* 23-ORD-

079; 21-ORD-011. Therefore, the Cabinet subverted the intent of the Act within the meaning of KRS 61.880(4).¹

On appeal, the Cabinet initially reiterated its claim that the request for emails and attachments was unreasonably burdensome because an initial search resulted in 158.737 megabytes of material, which the Cabinet says was too much to review. However, in response to an inquiry from this Office, the Cabinet stated the search results consisted of only 229 emails, of which only 192 were responsive to the request. And, the Cabinet stated it had released “[a]ll or portions” of 15 of those emails to the Appellant, but “declined to release” the remaining 177, and the reasons for its partial denials of the request were contained in an “exception and identification log” provided to the Appellant. The Cabinet therefore claims the portion of this appeal relating to the Appellant’s first request is moot.

Under 40 KAR 1:030 § 6, “[i]f the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.” Mootness, however, only applies when the agency provides the requested records in their entirety. *See, e.g.*, 23-ORD-313 n.2; 20-ORD-078; 12-ORD-046. Therefore, this appeal is not moot.

Under KRS 61.872(6), if a request “places an unreasonable burden in producing public records[,] 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.” In light of the Cabinet’s admission that fewer than 200 responsive emails were found, which it has already reviewed and redacted, the Cabinet cannot meet its burden of proof on this issue. Therefore, the Cabinet violated the Act when it partially denied the Appellant’s first request under KRS 61.872(6).²

On August 18, 2025, the Appellant submitted a second multi-part request by email for “[a]ll communication between any Department [of Highways] personnel and KREAB [the Kentucky Real Estate Appraisers Board] or its representatives from January 1, 2020, to present”; “[a]ll records related Dean M. Loy’s professional training and certifications while employed by the Department”; “current written policies, procedures, or guidelines that govern” certain specified topics; “[r]ecords of

¹ The Appellant further claims the Cabinet imposed “technical barriers to meaningful access” when it provided records to him on August 13, 2025. As evidence for this claim, the Appellant provides an email exchange on August 27, 2025, in which the Cabinet attempted to provide records through various delivery methods after the Appellant claimed he could not open email attachments. However, there is no evidence of improper conduct by the Cabinet, which was apparently making good-faith efforts to assist the Appellant in accessing the records.

² Because the Appellant brought this appeal seeking review of the Cabinet’s blanket denial of the request for emails and attachments under KRS 61.872(6), the Cabinet’s subsequent redactions are not ripe for review.

Department personnel attendance at professional meetings, conferences, or continuing education events involving real estate appraisers from January 1, 2020, to present”; and “[a]ll correspondence between Department personnel and any professional licensing boards (other than KREAB) regarding real estate appraisers from January 1, 2020, to present.” The Cabinet acknowledged receipt of that request on August 19, 2025.

On August 26, 2025, the sixth business day after receipt of the request, the Cabinet stated it was “coordinating with the Office of Information Technology as well as the Division of Right of Way and Utilities” and would “require 10 additional days to respond.” Having received no further response from the Cabinet by September 17, 2025, the Appellant initiated this appeal.

As previously noted, KRS 61.880(1) requires an agency to grant or deny a request for records within five business days, unless it properly extends the time under KRS 61.872(5) by providing a detailed explanation of the cause for delay and the earliest date when records will be available. An agency that fails to meet its self-imposed deadline for providing records subverts the intent of the Act by excessive extensions of time. *See KRS 61.880(4).* Here, the Cabinet issued no response within five business days other than an acknowledgment of receipt, did not give a detailed explanation of the cause for further delay, and failed to meet its self-imposed deadline. Thus, the Cabinet violated the Act and subverted the intent of the Act, within the meaning of KRS 61.880(4), as to the Appellant’s second 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
Attorney General

/s/ James M. Herrick
James M. Herrick
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