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25-ORD-363

November 18, 2025

In re: Devin Buchholz/Department of Veterans' Affairs

Summary: The Department of Veterans' Affairs ("the Department") violated the Open Records Act ("the Act") when it failed to respond to a portion of a request for records. The Department did not violate the Act when it provided all responsive records in its possession and declined to obtain an external evaluation of the authenticity of its records.

Open Records Decision

This appeal concerns the Department's disposition of two parts of a multi-part request for records submitted by former employee Devin Buchholz ("the Appellant") on August 7, 2025. In one part, the Appellant requested "any and all documentation . . . dated on or around June 28, 2023, relating to [his] transition from Personal Service Contract (PSC) status to classified 18A status, that reflects or confirms" the Appellant was notified that he must serve an initial probationary period. The Department initially denied this request "pursuant to KRS 61.872(6), as the identical records were previously provided in response to" a July 2025 request from the Appellant for his personnel file. However, in subsequent correspondence dated August 18, 2025, the Appellant explained that the Department's response to his July request did not include any documentation of his probationary status and that he merely sought "records not previously provided" or, in the alternative, confirmation of "the nonexistence of responsive documentation related to these matters." In a supplemental response dated August 26, 2025, the Department stated it was providing "records that concern [the Appellant's] transition from personal service contract (PSC) to Classified 18A status on or around June 28, 2023," which "may contain identical records" from its response to his July 2025 request.

On appeal, the Appellant states he merely wishes to confirm whether "a specific form" exists notifying him of his probationary status in June 2023. In response, the Department asserts it "has supplied all those records that it has in its possession that are not otherwise exempted" under the Act. A statement from a public agency that it has disclosed all responsive records is "tantamount to an affirmative

statement that the remaining records requested do not exist.” 04-ORD-040. Therefore, the Department did not violate the Act when it provided all records responsive to this part of the Appellant’s request.

In the other part of the request, the Appellant sought “the full metadata and original file source for” five documents attached to a motion filed by the Department in a Kentucky Personnel Board appeal, designated as Exhibits C, E, G, H, and I. Specifically, the Appellant requested the “[d]ate of original creation,” “[d]ocument author,” “[d]ates of any edits or changes,” “[p]rint history,” “[d]evice or software used for creation,” “[a]ny audit trail or revision history,” and a “complete chain of custody regarding each file.” For each document, the Appellant requested “the original electronic file in its native format.” In response, the Department provided “pre-existing query results” regarding the author, creation date, and last modification date for Exhibits C and E, but stated it “does not maintain” the other metadata requested. The Department also stated “no responsive records” exist for Exhibits G, H, and I.

On appeal, the Appellant claims the Department failed to respond to his request for the original electronic files for the five exhibits. When a public agency receives a request for 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 violates KRS 61.880(1) if it fails to advise the requesting party whether the records exist.” *Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 873 (Ky. App. 2021) (quoting 20-ORD-010). A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090. Thus, the Department violated the Act when it initially failed to respond to the Appellant’s request for the electronic document files.

After this appeal was initiated, the Department provided “the responsive native electronic Microsoft Word file[s]” for Exhibits C and E. The Department further states it “has no additional responsive records for the data that was requested” and it has now provided “the full extent of the data retrievable by the agency without creating a new record.” Once a public states affirmatively that no additional records exist, the burden shifts to the requester to make a *prima facie* case that requested records exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not made a *prima facie* case that the original electronic files for Exhibits G, H, and I and their associated metadata still exist. As to the remaining metadata for Exhibits C and E, a public agency has discretion whether “to produce a record in a nonstandardized format.” KRS 61.874(3). To the extent that metadata “can even be considered a ‘public record’” under the Act, a request for metadata is nonstandardized when the agency does not “maintain[] a pre-existing query, filter, or sort capable of extracting the records as requested.” 21-ORD-178 (quoting 12-ORD-028). Here, the Appellant has provided no evidence to contradict the Department’s claim that it has provided all the metadata it maintains

as a pre-existing query for Exhibits C and E. Therefore, the Department did not violate the Act when it provided all records responsive to this part of the Appellant's request.

In the same part of his request, the Appellant asked "that a separate evaluation by the State IT Department [*sic*] be conducted to independently verify the creation and modification dates, authorship, and overall authenticity of each document," which "should include a report of any relevant anomalies, file creation inconsistencies, or indications of post-dated document creation." In response, the Department stated it "is not obligated to compile a list or create a record to satisfy an open records request, in this case, a forensic evaluation."

On appeal, the Appellant claims the Department's refusal to obtain an external evaluation of its records and generate a report "constitutes a clear violation of" the Act. But the Act does not "require a public agency to create a record to satisfy a request." 21-ORD-178. Nor does the Appellant cite any provision of the Act that purportedly requires an agency to obtain an "evaluation" of its records by an outside entity to detect "anomalies." The "Open Records provisions were not intended to serve as a comprehensive audit tool." OAG 89-81. Accordingly, "questions relating to the verifiability, authenticity, or validity of records [are] not capable of resolution" under the Act. 04-ORD-216 n.1. Therefore, the Department did not violate the Act when it declined to obtain the "evaluation" requested by the Appellant.

In sum, the Department violated the Act when it initially failed to respond to the Appellant's request for the five exhibits in their original electronic format. However, the Department did not violate the Act when it provided all responsive records in its possession and declined to obtain an external evaluation of the authenticity of its records.

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
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Distributed to:

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