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25-ORD-372

November 24, 2025

In re: Vivian Miles/Lexington Police Department

Summary: The Lexington Police Department ("the Department") did not violate the Open Records Act ("the Act") when it did not provide records it does not possess. The Department violated the Act when it did not properly invoke KRS 61.872(5) to delay its disposition of the October 16 request.

Open Records Decision

On October 9, 2025, Vivian Miles ("Appellant") submitted a request to the Department seeking records "documenting 'written request/explanation/reason' for release of DNA evidence to" a specific Department detective between June 28 and July 12, 2021.[1] In response, on October 15, 2025, the Department explained that "[w]ritten requests to check out evidence are emailed to the Property and Evidence Unit" and that the Department's "retention schedule for emails sent or received by [it] is two years." Thus, the Department denied the request, stating that "any written request to check out evidence" responsive to the Appellant's request "no longer exists."

On October 16, 2025, the Appellant submitted a second request seeking (1) the records retention number the Department was relying on in its October 15 response and (2) certificates of destruction documenting the deletion of the records sought in her first request. On October 23, 2025, the Department stated, "Due to the nature of your request, our office needs additional time to determine if responsive records exist" and said its response would be issued on October 28, 2025. This appeal followed.

[1] The Appellant also identified a case number to which the requested record is related.

Regarding the October 9 request, the Department maintains that it does not possess any emails responsive to the Appellant's request. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make a *prima facie* case that the requested record does or should 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 the records do or should exist, then the public 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).

Here, to make a *prima facie* case that the Department should still possess the records, the Appellant refers to the Department's retention schedule. Series L4885[2] governs records that "document all investigative procedures followed when a [non-homicide] felony has been committed" and "is a compilation of all material gathered in a felony investigation."[3] Records governed by Series L4885 must be retained for 50 years. According to the Appellant, Series L4885 is the retention schedule applicable to the requested email. In response, the Department explains that Series L5450 is the relevant retention schedule. That schedule governs routine correspondence of the Department.[4] Records governed by Series L5450 must be retained for two years.

Although the parties disagree regarding which retention schedule applies, answering that question is not necessary to resolve this appeal because, even assuming the Appellant is correct, the Department has explained the adequacy of its search.[5]

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

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[2] The Appellant cited Series L4662, which governs non-homicide investigation files of local governments generally. Series L4885 is substantively the same but is applicable to the Department.

[3] *See* General Schedule for Lexington/Fayette Urban County Government, Series L4885, "Felony Investigation Case File (Non-Homicide)" available at https://kdla.ky.gov/records/RetentionSchedules/Documents/Local%20Records%20Schedules/LexingtonFayetteUrbanCountyGovernmentRecordsRetentionSchedule.pdf (last accessed November 24, 2025).

[4] *See* General Schedule for Lexington/Fayette Urban County Government, Series L5450, "Routine Correspondence" available at https://kdla.ky.gov/records/RetentionSchedules/Documents/Local%20Records%20Schedules/LexingtonFayetteUrbanCountyGovernmentRecordsRetentionSchedule.pdf (last accessed November 24, 2025).

[5] Moreover, questions regarding which retention schedule applies to a particular record are better answered by the Kentucky Department for Libraries and Archives.

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.*

Here, the Department has identified the individual who would have sent the email in question and explained that it searched his emails without success. As such, even if that Appellant has made a *prima facie* case that responsive records should exist, the Department has demonstrated that it conducted an adequate search for the records. Thus, the Department's response to the October 9 request did not violate the Act.

Regarding the Department's response to the October 16 request, the Appellant asserts that the Department's delay subverted the intent of the Act. Under KRS 61.880(1), a public agency has five business days to fulfill or deny a request for public records. A public agency may delay access to responsive records beyond five business days if such records are "in active use, storage, or not otherwise available." KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must also notify the requester of the earliest date on which the records will be available and provide a detailed explanation for the cause of the delay. Here, the Department did not specifically invoke KRS 61.872(5); it merely stated that it required additional time to respond "[d]ue to the nature of [the Appellant's] request." A "detailed explanation" under KRS 61.872(5) should not consist of "boilerplate language that [is] in no way correlated to [the] particular request." 11-ORD-135. Therefore, because the Department's response to the Appellant's October 16 request did not give a detailed explanation of the cause for delay or specifically invoke KRS 61.872(5), the Department did not properly delay its final response.[6]

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.

[6] On appeal, the Department claims it remedied this error by explaining the need for delay when it issued its final response. That is incorrect. An agency's "detailed explanation" must accompany its original invocation of KRS 61.872(5).

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