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25-ORD-385

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In re: Zach Jordan/Kentucky Transportation Cabinet

Summary: The Kentucky Transportation Cabinet (“the Cabinet”) subverted the intent of the Open Records Act (“the Act”) when it failed to properly invoke KRS 61.872(5) and when it failed to produce records within its own self-imposed deadline. However, the Cabinet justified its delay on appeal.

Open Records Decision

On September 5, 2025, Zach Jordan (“the Appellant”), submitted a request to the Cabinet seeking (1) communication records relating to the dismissals of three Cabinet employees, (2) “license revocation letters sent from the [Cabinet’s] Fraud and Hearing Section,” and the “names, addresses (including street address, city, state, and zip code), and birth year of all individuals who have received a license revocation letter from” the Cabinet’s Fraud and Hearing Section. On September 11, 2025, in response, the Cabinet stated it “require[s] an additional [10] days to collect and review any responsive records.” On September 26, 2025, the Cabinet stated it “require[s] 10 additional days to provide a response.” On October 6, 2025, the Cabinet again stated that it “require[s] 10 additional days to provide a response.” Finally, on October 23, 2025, the Cabinet stated that it “requires 15 additional days to review extensive records and provide a response.” On, October 31, 2025, the Appellant initiated this appeal.

Under KRS 61.880(1), a public agency has five business days to fulfill or deny a request for public records. This period 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.” KRS 61.872(5). Under KRS 61.880(4), a person may petition the Attorney General to review an agency’s action if the “person feels 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’s initial response did not grant or deny the Appellant’s request. Instead, without invoking KRS 61.872(5), the Cabinet stated that it needed 10 additional days to issue its response. Moreover, that response did provide a “detailed explanation” for why the Cabinet could not timely provide the requested records. However, although the Cabinet stated the records would be available for inspection after ten days, it did not make any records available by that date. Instead, the Cabinet issued three additional unilateral extensions of the date on which the Appellant could expect records. The Office has found that a public agency does not comply with KRS 61.872(5) when it notifies the requester of the earliest date on which requested records would be available but then misses its self-imposed deadline. *See, e.g.*, 25-ORD-086; 23-ORD-079; 21-ORD-011. Here, the Cabinet issued three separate extensions of its response deadline, never provided a detailed explanation for why the extensions were necessary, and then missed each deadline. Therefore, the Cabinet subverted the intent of the Act by delay and excessive extensions of time, within the meaning of KRS 61.880(4), when it failed to adequately invoke KRS 61.872(5) and when it failed to make a final disposition of the Appellant’s request by the dates on which it said the records would be made available.¹

On appeal, the Cabinet provides more detailed facts to justify its delay. Under KRS 61.880(2)(c), the public agency has the burden of proof to “substantiate the delay and that it is acting in good faith.” 21-ORD-045. Here, the Cabinet explains it has identified “over ten thousand records across 600 different folders” and needed to conduct review and redaction of those records before producing “over 1500 records.” Moreover, the Cabinet has provided its final response to the Appellant, which explained that extensive redactions were necessary to remove information exempted by federal law.² In 25-ORD-235, the Office found a delay of six weeks was reasonable to review and produce 5,800 records. Here, the Cabinet’s delay amounted to eight weeks to review over 10,000 records and produce 1,500. Given the number of records implicated by the request and the Cabinet’s good faith in producing them—as demonstrated by its November 6 final response—this delay was not inherently unreasonable. Therefore, the Cabinet has met its burden of proof to justify its delay in producing records.

¹ On appeal, the Cabinet asserts that this appeal is moot because it issued a final response to the Appellant on November 6, 2025. *See* 40 KAR 1:030 § 6 (“If 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.”). Because the Appellant brought this appeal claiming the Cabinet had unreasonably delayed his access to the records, the appeal is not moot with respect to Cabinet’s delay. *See, e.g.*, 24-ORD-015 n.3.

² 18 U.S.C. § 2721(a), which is incorporated into the Act by KRS 61.878(1)(k), requires that the Cabinet not disclose certain information related to private individuals.

At bottom, the Cabinet's repeated unexplained extensions and subsequent failures to meet its self-imposed deadlines constitute clear subversion of the Act. Although the Cabinet has subsequently explained why its total delay was reasonable in the context of the Appellant's request, its method of delay was far from reasonable.³

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
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Distributed to:

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³ Because the Appellant's appeal was brought on the basis of the timeliness of the Cabinet's response, the Office need not address the merits of the Cabinet's final response.