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25-ORD-404

December 16, 2025

In re: Jason Kremer/Northern Kentucky Water District

Summary: The Northern Kentucky Water District ("the District") violated the Open Records Act ("the Act") when it denied a request for records under KRS 61.872(6) without proving by clear and convincing evidence that repeated requests were intended to disrupt other essential functions of the District.

Open Records Decision

On October 24, 2025, Jason Kremer ("Appellant") submitted an eight-part request for records to the District.[1] The District timely denied the request, asserting under KRS 61.872(6) that the request was "intended to disrupt other essential functions of the" District. As support for its denial, the District referenced its production of 547 pages of records responsive to a previous request submitted by the Appellant[2] and the continued correspondence the Appellant had directed to the District and its employees. The District further referenced an allegation of criminal activity by the Appellant, his complaints about the District that were submitted to the Public Service Commission, and his threat to submit a complaint about the District to this Office. This appeal followed.

Under KRS 61.872(6), "[i]f the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the

[1] Specifically, the Appellant sought: (1) records documenting that "accusations that [he] declined or refused to communicate with [District] staff; (2) records of phone calls between him and District staff; (3) records associated with a particular phone call on October 21, 2025, and the name of a District employee; (4) records documenting "second-follow-ups"; (5) correspondence from the District's counsel and records custodian instructing the Appellant to only communicate with him; (6) communications regarding an alleged theft of the Appellant's property; (7) communications between the District and the Public Service Commission regarding the Appellant; and (8) copies of the physical mailing envelopes associated with his original records request and certain associated information.

[2] That request was the subject of 25-ORD-395.

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." The "clear and convincing evidence" standard is a difficult threshold for an agency to meet, as it "requires the party with the burden of proof to produce evidence substantially more persuasive than a preponderance of evidence, but not beyond a reasonable doubt." *Fitch v. Burns*, 782 S.W.2d 618, 622 (Ky. 1989). Thus, the trier of fact "must be persuaded that the truth of the contention is 'highly probable.'" *Id.* (quoting *McCormick on Evidence* § 340(b), at 796 (2d ed. 1972)).

To determine whether a request is "intended" to disrupt the essential functions of an agency, the Office considers different factors than those described above. This exemption requires the agency to provide evidence of factors separate from the request itself, because the official custodian must have "reason to believe" the requester's "intent" is not to inspect records, but to cause disruption. *Id*. Although it is difficult for an agency to prove by clear and convincing evidence that a requester solely intends to disrupt its essential functions, it is not impossible. For example, in 02-ORD-230, intent to disrupt was established by a broadly worded request ("ALL Richmond District Court Facilities Corporate Records"), coupled with an extensive history of failure to retrieve requested records and a criminal conviction for harassing communications directed to city employees. Similarly, in 05-ORD-121, the Office found intent to disrupt when an individual made an "overly broad and blanket [request] for previously requested and provided records" and had established a prior "pattern of conduct" in which he requested "voluminous documents [and] either did not inspect the records or inspected only a small portion of them." In 22-ORD-048, intent to disrupt was proven by a requester's repeated failure to retrieve records and requesting copies of all city ordinances, which he knew were temporarily not in the city's possession due to an ongoing digitization process. In 15-ORD-015, intent to disrupt was found when a requester had repeatedly failed to pay for copies of voluminous records in a timely manner and demanded the agency pay him $500,000 to stop submitting requests. But outside such "extreme and abusive circumstances[,] it is the legislative intent that public employees exercise patience and long-suffering in making public records available for public inspection." OAG 77-151.

Here, the District argues that intent to disrupt is demonstrated by three factors: (1) "the requests are repetitive and designed to duplicate work"; (2) the circumstances surrounding the Appellant's appeals to the Office; and (3) ongoing disputes between the District and the Appellant before other agencies. The Office will address each in turn.

First, it does not appear that the Appellant's two submitted requests are identical.[3] Although it is likely that there may be an overlap of records that are responsive to both requests, the Office concludes that the requests, overall, are substantially unique. Thus, this request is district from 05-ORD-121, in which the requester had demonstrated a pattern of submitting requests for previously requested records. Moreover, in 05-ORD-121, the agency demonstrated that the requester had a pattern of requesting a large number of records and then failing to inspect the majority of them. The District has not established such a pattern of conduct by the Appellant here.

The District also refers to the circumstances surrounding the Appellant's multiple appeals to the Office. The Appellant has filed three appeals with the Office. One appeal is final and resulted in 25-ORD-395. The District explains that the Appellant submitted the appeal that was the subject of 25-ORD-395 before inspecting the records made available. Although the Office does agree that the submission of an appeal prior to inspection of the record production can be evidence of an intent to disrupt, the Office declines to find that this fact, standing alone, constitutes clear and convincing evidence of the Appellant's intent to disrupt the District's functions. This is because, in 25-ORD-395, the Office found that one portion of the District's response had failed to comply with the Act. Given the evident merit of at least a portion of the Appellant's appeal, the Office declines to find that the timing of that appeal is evidence of an intent to disrupt the District's essential functions.

Finally, the District explains that it and the Appellant have been engaged in legal proceedings before other administrative agencies that relate to "the same dispute." According to the District, the existence of these other proceedings is evidence of the Appellant's goal of "forcing unnecessary administrative expenditure and diverting resources away from essential operations."[4] However, the Office has previously found the fact that a requester "has been a critic of" a public agency, 05-ORD-152, or pursues legal action against the agency, *see* OAG 89-79, is not clear and convincing evidence of an intent to disrupt the agency's essential functions.

In the Office's prior decisions in which a public agency demonstrated by clear and convincing evidence that a requester intended to disrupt essential functions of a public agency, certain common factors can be found. In general, the requesters have

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[3] A description of the Appellant's prior request is available at 25-ORD-395 n. 1.

[4] Of course, the General Assembly arguably has determined that responding to requests under the Act *is* an "essential operation," insofar as the "free and open examination of public records is in the public interest" and any exemption from the Act's disclosure requirements must be "strictly construed." KRS 61.871.

exhibited a previous pattern of failure to retrieve, inspect, or pay for voluminous records after requesting them, coupled with clearly harassing behavior or repeated requests for the same records. This appeal does not present the same type of evidence found in 22-ORD-048, 15-ORD-015, 05-ORD-121, or 02-ORD-230. Accordingly, the Office cannot find that the District has sustained, by clear and convincing evidence, its claim that the Appellant's "requests are intended to disrupt other essential functions of the public agency" within the meaning of KRS 61.872(6). Therefore, the District violated the Act when it denied the Appellant's request.[5]

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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[5] The Office makes no finding regarding whether fulfilling the Appellant's request would amount to an unreasonable burden under KRS 61.872(6).