



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-419

December 23, 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 November 18, 2025, Jason Kremer (“Appellant”) submitted a seven-part request for records to the District.<sup>1</sup> 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<sup>2</sup> 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 separate appeals submitted to this Office. This appeal followed.<sup>3</sup>

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<sup>1</sup> Specifically, the Appellant sought: (1) “current and historical [District] documents related to asbestos safety”; (2) records related to “the asbestos exposure incident involving” a named District employee; (3) records related to the District’s compliance with its “asbestos exposure reporting policy”; (4) records of disciplinary action against a particular District employee; (5) all communications between the District and a particular Kentucky Occupational Safety and Health Review Commission (“KOSH”) inspector; (6) all communications between the District and KOSH; and (7) records related to District work performed at a particular address.

<sup>2</sup> That request was the subject of 25-ORD-395.

<sup>3</sup> Apart from its general denial under KRS 61.872(6), the District stated that it does not possess records responsive to parts 1, 3, 4, and 5 of the Appellant’s request. The Appellant has not challenged this portion of the District’s denial.

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 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)).

In 25-ORD-404, the Office considered this Appellant’s challenge to the District’s similar invocation of KRS 61.872(6). There, the Office concluded that the District had not established by clear and convincing evidence that the Appellant intended to disrupt its essential functions. In the present appeal, the District refers to the same arguments made in 25-ORD-404. Nothing in the record before it demands that the Office depart from its prior decision.<sup>4</sup> Therefore, 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.<sup>5</sup>

Separately, the Appellant also alleges that the District violated the Act by (1) allowing its General Counsel to serve as its records custodian, (2) by timing its denial to delay access to records, and (3) by not advising the Appellant of his right to appeal its denial to this Office. The Office will address each claim in turn.

An “official custodian” is the “chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records.” KRS 61.870(5). The Act does not contain any limitations

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<sup>4</sup> The only new fact presented in this appeal is that the District received a KOSH complaint that it believes was submitted by the Appellant. But even assuming that belief is correct, 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.

<sup>5</sup> The Office makes no finding regarding whether fulfilling the Appellant’s request would amount to an unreasonable burden under KRS 61.872(6).

regarding who can serve an agency's "official custodian."<sup>6</sup> Thus, the District did not violate the Act when its General Counsel acted as its official custodian.

Next the Appellant alleges that the District has delayed his access to records. Under KRS 61.880(1), an agency must issue a written response granting or denying a request within five business days of receipt. Here, the Appellant request was submitted by mail on November 18, 2025, and the District states that it was received on November 20, 2025. The District's response was issued on November 26, 2025, the fourth business day after receipt of the request. As such, the District's response was timely under the Act.

Finally, the Appellant alleges that the District was required to advise him of his right to appeal its denial. The Appellant is incorrect. No provision of the Act requires an agency to inform a requester of his or her right to file an appeal with this Office. Thus, the District did not violate the Act when it did not do so in its denial.

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](mailto: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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<sup>6</sup> The Appellant cites several decisions of the Office for the proposition that an agency attorney may not make decisions regarding whether to grant or deny requests for records received by the agency. However, none of the decisions cited by the Appellant support the Appellant argument and his description of those decisions do not accurately reflect their content.