COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

26-ORD-012

January 15, 2026

In re: Valerie Frost/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services ("the Cabinet") subverted the intent of the Open Records Act ("the Act"), within the meaning of KRS 61.880(4), by delay and excessive extensions of time. The Cabinet violated the Act when it limited its search to a time frame not specified in the request. However, the Cabinet did not violate the Act when it could not provide records that do not exist.

Open Records Decision

On November 17, 2025, Valerie Frost ("the Appellant") submitted a request to the Cabinet for "all public records in the possession of DCBS [the Department for Community Based Services] relating to [a named employee] and/or any communications regarding" the Appellant. More specifically, the request asked for "[e]mails, memos, notes, letters, or other correspondence sent or received by" nine individuals or entities; "[d]ocumentation of investigations, disciplinary actions, or personnel files related to" the employee; "[a]ny internal communications, notes, or records regarding the investigation of [the employee] and any actions taken concerning" the Appellant; and "[r]ecords reflecting communications between DCBS and other agencies or offices (OIG, Ombudsman, HR, or any internal DCBS office) regarding" the employee or the Appellant.

In an initial response on November 24, 2025, citing KRS 61.872(5), the Cabinet stated the requested records were "not readily available because the [Cabinet] is having to manually search its files and records database for responsive records" and, "due to the large number of records to search through for responsiveness," the Cabinet would need until December 1, 2025, to provide the records. On December 1, 2025, the Cabinet issued a second response stating the request had "been extended until the 8th of December [d]ue to the extensive nature of the work." On December 8, 2025, the Cabinet issued a third response stating that "the task [had] become more time consuming than originally thought," and it would require until December 12, 2025, to complete the request. Ultimately, the Cabinet provided an initial tranche records

to the Appellant on December 10, 2025, and a second tranche the next day. After the Appellant complained that attachments referenced in various emails had not been provided, the Cabinet responded on December 16, 2025, stating it had "identified an entire folder that was inadvertently overlooked" and furnished those records to the Appellant. This appeal followed.

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 . . . delay past the five (5) day period described in [KRS 61.880(1) or] excessive extensions of time." KRS 61.880(1) requires a public agency to grant or deny a request for records within five business days of receiving it, unless the agency properly invokes KRS 61.872(5) to delay inspection of records that are "in active use, in storage or not otherwise available." When a public agency delays inspection of records under KRS 61.872(5), it must provide "a detailed explanation of the cause" for the delay and notify the requester of the "earliest date on which [records] will be available for inspection." *Id.*

When an agency invokes KRS 61.872(5) to delay inspection of records, it must substantiate both the need for any delay and that it is acting in good faith. *See* KRS 61.880(2)(c) (placing the burden on the public agency to substantiate its actions); *see also* 23-ORD-311; 21-ORD-211; 21-ORD-045. In determining whether a delay is reasonable, the Office considers such factors as "the number of the records, the location of the records, and the content of the records." 21-ORD-045. Here, the Cabinet invoked KRS 61.872(5) and initially stated the records would be made available by December 1, 2025. However, the Cabinet's response did not indicate how many records were implicated by the request, or how long it would take to review each record, so as to justify the additional delay. Therefore, the Cabinet subverted the intent of the Act, within the meaning of KRS 61.880(4), by delay past the five-day period provided in KRS 61.880(1).

Moreover, a public agency subverts the intent of the Act by excessive extensions of time when it fails to meet its own self-imposed deadline to issue its final response. *See, e.g.,* 25-ORD-169; 23-ORD-079; 21-ORD-011. Here, the Cabinet twice failed to provide records by the date when it had stated it would do so. Therefore, the Cabinet subverted the intent of the Act, within the meaning of KRS 61.880(4), by excessive extensions of time.

On appeal, the Appellant claims that "the production remains incomplete." Specifically, the Appellant states the Cabinet has not provided "records after April 2024, access logs, and other referenced attachments." In response, the Cabinet explains it did not search for records dated after April 2024 because the Appellant "had a case with the Department for Community Based Services [that] was closed in April 2024," and it "believed that was the relevant time frame" because the Appellant

had sought records relating to her. However, the Appellant clarified in an email to the Cabinet on December 8, 2025, that she was seeking "all responsive records in [the Cabinet's] possession, regardless of date, that fall within the categories [she] listed." Therefore, the Cabinet violated the Act when it failed to search for records dated after April 2024.[1]

Regarding "access logs," the Cabinet states those records were not specifically requested but it provided them on December 22, 2025. Therefore, this appeal is moot as to access logs. *See* 40 KAR 1:030 § 6.

As to the Appellant's claims that "other referenced attachments" were not provided, the Cabinet states it provided the referenced attachments on December 16, 2025, and the request is now "complete." Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to make a *prima facie* case that additional records do exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't,* 172 S.W.3d 333, 341 (Ky. 2005). A requester must provide some evidence to make a *prima facie* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record, or other factual support for the existence of the records. *See, e.g.*, 21-ORD-177; 11-ORD-074. A requester's bare assertion that certain records should exist is insufficient to make a *prima facie* case that the records actually do exist. *See, e.g.*, 22-ORD-040. Here, the Appellant has not established a *prima facie* case that "other referenced attachments" exist that were not provided. Accordingly, the Office cannot find that the Cabinet violated the Act by failing to provide those 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
James M. Herrick
Assistant Attorney General

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[1] The Cabinet states the Appellant has made subsequent records for "emails from after April 2024," which the Cabinet is processing separately.

Distributed to:

Ms. Valerie Frost
Natalie A. Nelson, Esq.
Peyton Sands, Esq.
Ms. Evelyn L. Miller