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26-ORD-075

March 2, 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 delaying access to responsive public records and failing to meet its own self-imposed deadline for production of the records. The Cabinet also violated the Act by failing to properly invoke KRS 61.872(5).

Open Records Decision

During the period of January 12 to 22, 2026, Valerie Frost (“the Appellant”) submitted nine requests for copies of records related to how the Cabinet and the Department for Community Based Services (“DCBS”) handled previous requests that she made, and pertaining to a named employee of DCBS.¹ Upon receipt of each request, the Cabinet issued the following response:

¹ Specifically, the Appellant sought: (1) a “Facebook video referenced in internal DCBS emails”; (2) records containing discussions about how to respond to the Appellant’s records requests; (3) records containing final determinations that some records requested by the Appellant do not exist; (4) records containing “any litigation hold notices, preservation directives, retention instructions, or similar communications issued to [Cabinet] or DCBS staff that relate” to three categories of records; (5) “communications between [the Cabinet and/or DCBS] and the office of Legal Services (OLS) that relate to Valerie Frost or Jennifer Kerby” related to any of six different subjects; (6) “records reflecting legal guidance, consultation, or instructions issued following a court-initiated complaint concerning Jennifer Kerby’s social media activity” including, but not limited to, seven categories of records”; (7) records reflecting the assignment, inspection, restriction, servicing, seizure, return, replacement or other administrative handling of any state-issued devices assigned to Jennifer Kerby during calendar years 2024 and 2025,” including but not limited to seven categories of records; and (8) records related to “a renewed and time-sensitive escalation of harassment, stalking behavior, identity misuse, and third-party interference that clustered tightly within minutes on or about January 21, 2026, following a period of relative cessation after my initial Open Records activity beginning on or about November 17, 2025.”

Pursuant to KRS 61.872(5), the records you have requested are not readily available because the [Cabinet] is having to manually search its files and records database for responsive records. The [Cabinet] is searching for responsive records and will review any responsive records for compliance with the Kentucky Open Records Act. Due to the large number of records to search through for responsiveness, the [Cabinet] will need until January 30, 2026[,] to respond to your request.

However, on January 30, the Cabinet did not provide the Appellant with any records; instead, the Cabinet sent a combined response to all nine requests and extended its own deadline until February 18, 2026. To justify the additional delay, the Cabinet stated that it is “having to work with Kentucky’s Commonwealth Office of Technology to compile the records that may be responsive to your request. The Cabinet will then need to review these records for responsiveness and compliance with the Open Records Act.”² This appeal followed.³

A public agency does not violate the Act by consolidating its response to multiple requests made by the same requester in a short time. *See* 23-ORD-003 (recognizing that a public agency is permitted “to consolidate multiple requests made on behalf of the same organization and received close in time to one another” in determining whether compliance would be unreasonably burdensome under KRS 61.872(6)). Thus, the Cabinet did not violate the Act when it consolidated its responses to the Appellant’s requests.

Under KRS 61.880(4), however, if a 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,” the person “may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.” KRS 61.880(1) requires a public agency to grant or deny a request for public records within five business days of receiving it, unless the agency has properly invoked 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.*

² The Cabinet also stated it had “decided to consolidate [the Appellant’s] requests into one request.”

³ The Appellant states the only issue on appeal is “whether [the Cabinet’s] consolidation and extension comply with the requirements of KRS 61.872(5) and the Cabinet’s duty to respond to requests in good faith.”

When a public agency invokes KRS 61.872(5) to delay inspection of records, it must substantiate both the need for a delay of any length 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* 26-ORD-012; 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 it would make the records responsive to each of the Appellant’s requests available by January 30, 2026. However, the Cabinet’s response did not provide any estimate of the volume of records implicated or approximate how long it would take for staff to review each record, and perform the necessary redactions, if any, pursuant to KRS 61.878(1) and (4), as required to justify the additional delay. Therefore, the Cabinet subverted the intent of the Act, within the meaning of KRS 61.880(4), by delaying production of the responsive and nonexempt records without providing a detailed explanation for why the delay is necessary.

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.*, 26-ORD-012; 25-ORD-169; 23-ORD-079; 21-ORD-011. Although the Cabinet originally stated that responsive records would be made available on January 30, 2026, it did not provide the records on that date. Therefore, the Cabinet also subverted the intent of the Act, within the meaning of KRS 61.880(4), by excessive extensions of time.

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/ Michelle D. Harrison
Michelle D. Harrison
Assistant Attorney General

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Distributed to:

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