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26-ORD-131

March 30, 2026

In re: John Rothenburger/Shelby County School District

Summary: The Shelby County School District (“the District”) violated the Open Records Act (“the Act”) when it did not timely respond to a request for records and when it did not adequately explain its reliance on KRS 61.878(1)(a). The District did not violate the Act when it did not respond to a request sent by text message, when it did not respond to a request it did not receive, and when it did not provide records it does not possess.

Open Records Decision

This appeal concerns three requests for records John Rothenburger (“the Appellant”) submitted to the District. The Office will consider each, in turn.

First, on June 27, 2025, the Appellant requested a copy of “the findings, charges, or other disciplinary actions” against him. This “request” was submitted by a text message to the District’s superintendent. The superintendent responded, stating she would “get that to you as soon as possible.” On appeal, the Appellant complains that he did not ultimately receive a response from the District.

Under KRS 61.872(2)(b), a request for records may either be hand delivered or submitted by mail, facsimile, or email. Here, the Appellant submitted his June 27 request by text message. Text messaging is not a delivery format authorized by the Act. Accordingly, the June 27 message was not a request for records to which the District was required to respond under the Act. Thus, the District did not violate the Act when it did not respond to the June 27 request.

Next, the Appellant states that he submitted an eight-part request for records on August 18, 2025.¹ In response, the District stated it had provided the Appellant with “copies of documents reflecting the complaint, the District’s investigation, and the outcome of the investigation.” The District stated it was withholding “records of other employees containing information of a personal nature.” Regarding the request for records related to other investigations of testing violations, the District stated that only the Appellant “received discipline as the result of testing violations in the District.”

The Appellant alleges the District did not timely respond to his request, adequately explain its denial, or provide all records responsive to his request.

Under KRS 61.880(1), a public agency has five business days to fulfill or deny a request for public records. Here, the District acknowledges that it issued its response on the sixth business day following its receipt of the request. Thus, the District did not comply with KRS 61.880(1).

A public agency denying inspection of public records must “include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). The agency must “provide particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013).

KRS 61.878(1)(a) exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” This exception requires a “comparative weighing of the competitive interests” between personal privacy and the public interest in disclosure. *Ky. Bd. of Exam’rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992). However, when the public agency fails to articulate a privacy interest, “the balance is decisively in favor of disclosure.” 10-ORD-082; *see also* 20-ORD-033; 19-ORD-227. Here, the District stated only that it was withholding “records of other employees containing information of a personal nature.” The District did not describe the records that were

¹ Specifically, the Appellant sought (1) all version of any submitted complaints, (2) all communications discussing the complaint, (3) any “investigative notes, interview summaries,” (4) “student statements” with student identifying information redacted, (5) “student test score data related to the case,” (6) a “list of any withheld documents and the legal authority for withholding them,” and (7) “[l]ogs of evidence collections and any internal memoranda related to my case.” The Appellant also separately requested records related to other allegations and an investigation into “testing violations” from the previous 10 years.

being withheld, nor did it articulate the privacy interest that would be implicated by their disclosure. By failing to provide any meaningful description of the records or the implicated privacy interest, the District did not adequately invoke KRS 61.878(1)(a).

Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make a *prima facie* case that the requested record does or should exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the record does or should exist, then the public agency “may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). A requester’s bare assertion that a public agency should or must possess the requested records is not adequate to make a *prima facie* showing that the agency does, in fact, possess the records. See, e.g., 22-ORD-040.

Here, the Appellant alleges that a different public agency provided him with records it had originally received from the District. The Appellant explains that the District did not provide him with those records when responding to his August 18 request. The Appellant has not provided the Office with a copy of the records he allegedly received from a different agency. As such, the Appellant has done no more than allege that additional records exist. This fails to make a *prima facie* case that additional records exist.

Finally, the Appellant states that he submitted a request on October 20, 2025, asking the District to “resend” him its August 26, email responding to his earlier August 18 request. The Appellant alleges the District violated the Act by not responding to this request.

The District explains that it “never received” the October 20 request. It states that the request likely went to its email spam filter. The Office has found that the interception of emailed requests by spam filters or anti-phishing programs that prevent them from reaching the recipient is tantamount to the agency not receiving the request. See, e.g., 25-ORD-087; 24-ORD-001; 23-ORD-182; 23-ORD-153; 23-ORD-064. Accordingly, the Office cannot find that the District violated the Act when it did not receive the request.

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/ Zachary M. Zimmerer
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Assistant Attorney General

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Distributed to:

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