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26-ORD-134

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 failed to issue a written response to a request made under the Act within five business days of receiving the request.

Open Records Decision

John Rothenburger (“the Appellant”) submitted a records request¹ to the District, which it received on December 2, 2025. On December 17, 2025, the District granted the Appellant inspection and copies of certain records, which he claims the District “represented verbally” were all the records responsive to his request. This appeal followed.

The Appellant claims the District failed to issue a timely written response to his request and failed to notify him in writing that the production of records would be delayed. Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify *in writing* the person making the request, within the five (5) day period, of its decision” (emphasis added). Here, the District states it “communicated with [the Appellant] that the records requested were available for [him] to retrieve on December 17, 2025,” but does not claim it “communicated” in writing. Thus, the District does not dispute the Appellant’s allegation that it failed to issue a timely written response that either granted or denied his request.

Instead, the District claims it “advised [the Appellant] that a delay [would] be needed” due to the “voluminous” nature of the requested records. Again, the District does not claim it communicated in writing. Under KRS 61.872(5), when public records

¹ Because the Appellant expressly limits the scope of his appeal to “timeliness only,” the content of the request is not at issue.

are “in active use, in storage or not otherwise available,” an agency must “immediately notify the applicant [and] designate a place, time, and date for inspection of the public records, not to exceed five (5) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.” This notification must be in writing, as “[t]he Act consistently requires agencies to respond *in writing* to open records requests, even when they are unable to supply the records requested.” *Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011) (emphasis added); *see also* 25-ORD-066. Here, the District does not dispute the Appellant’s allegation that it failed to “[i]nvoke an extension of time pursuant to KRS 61.872(5)” in writing; nor does the District claim to have issued a written response to the Appellant’s request at any time. Accordingly, the District violated the Act by failing to timely respond in writing as required by KRS 61.880(1).

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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Distributed to:

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