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26-ORD-151

April 6, 2026

In re: Noel Mark Botts/Department of Revenue

Summary: The Department of Revenue (“the Department”) violated the Open Records Act (“the Act”) when it failed to give a detailed explanation of the cause for delay in providing records as required under KRS 61.872(5). The Department also violated the Act when it withheld records in their entirety under KRS 131.190(1), instead of redacting the confidential information as required by KRS 61.878(4).

Open Records Decision

On January 14, 2026, attorney Noel Mark Botts (“the Appellant”) submitted a request to the Department for “[a]ll entities that applied for and were approved for a Real Property Tax Exemption as a Religious Organization and/or a Charitable Organization for the last 3 years, along with all supporting documentation.” Two days later, the Appellant amended his request to state he was also requesting “all such applications that were denied.” On January 21, 2026, the Department issued an initial response stating, “Due to the nature of [the] request and the number of records involved, the Department [would] require additional time to complete the compilation of responsive documents” and would “fully respond to [the] request on or before Thursday, February 12, 2026.” On February 12, 2026, the Department provided “a list of all entities that were approved for a real property tax exemption as a religious organization and/or charitable organization for the last three years,” but denied the remainder of the Appellant’s request under KRS 61.878(1)(l), KRS 131.190, and KRS 131.081(15). This appeal followed.

Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it. This time may be extended under KRS 61.872(5) when records are “in active use, in storage or not otherwise available,” but only if the agency gives “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record will be available for inspection.” In light of this provision, the Attorney General has recognized that persons requesting large volumes of records should “expect reasonable delays in

records production.” 12-ORD-228. However, a vague statement about the “nature” or volume of a request is not a “detailed explanation” under KRS 61.872(5). *See, e.g.*, 22-ORD-164; 17-ORD-194. Here, the Department’s only explanation for its delay was “the nature of [the] request and the number of records involved.” This was not a “detailed explanation” explaining why the stated length of the delay was necessary. *See, e.g.*, 24-ORD-273. Because its response did not comply with KRS 61.872(5), the Department violated the Act.

On appeal, the Department explains that records of the type requested by the Appellant are “stored away from the main files after a two (2) year period has passed from the agency action on the application for exemption,” and therefore, the records had to be retrieved “from multiple locations” and subjected to “legal review.” Under KRS 61.880(2)(c), however, the agency has the burden of proving that a delay is reasonable. *See, e.g.*, 21-ORD-045. In making this determination, the Office has considered the number of records sought, the location of the records, and the content of the records. *See, e.g.*, 22-ORD-176; 01-ORD-140; OAG 92-117. “[T]he agency must provide an estimate of the actual number of responsive records,” not merely “a general assertion that many responsive records exist.” 25-ORD-076. Further, although the Department has asserted that some responsive records were stored in a different location, it has not stated how many records were implicated or how much time was needed to retrieve and review them. Moreover, the “review” of records is an ordinary part of fulfilling an open records request, and an agency cannot justify additional delay by merely stating a request is “being reviewed by counsel.” 24-ORD-159. Accordingly, the Department has not met its burden of proof that the additional delay in responding to this request was reasonable.

With regard to the Department’s partial denial of the request, KRS 61.878(1)(l) exempts from disclosure “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, including any information acquired by the Department of Revenue in tax administration that is prohibited from divulgence or disclosure under KRS 131.190.” Under KRS 131.190(1), “[n]o [person] shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the [D]epartment or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person’s business.” This prohibition does not apply to “[a]ny matter properly entered on an assessment record, or in any way made a matter of public record.” KRS 131.190(2)(b). Accordingly, the Department states it disclosed the names of the entities approved for the tax exemption “because they were charitable entities registered under state and federal law.” The Department withheld the names of entities that were denied the tax exemption, as it takes the position that, under KRS 131.190(1), it “cannot even confirm or deny if an individual is a

taxpayer.”¹ The Department withheld all other materials, including the application forms, because they contained “proprietary information, tax identification numbers, financials, and quite frequently, banking account information.”²

The Office has previously found that exempt information under KRS 131.190(1) includes Social Security numbers, federal identification numbers, and information that “reveals the private details of the taxpayer’s business,” such as “profits, taxes, deductions, and salaries.” 07-ORD-255; 01-ORD-63; 94-ORD-64. Here, most of the categories of information identified by the Department are of the same general nature, and are therefore prohibited from disclosure by KRS 131.190(1).

However, the Department has withheld copies of the approved exemption applications in their entirety, on the grounds that “the only information that would not be redacted on the application would be the name of the entity.” A public agency bears the burden of proving that *all* records and information withheld are exempt from disclosure. KRS 61.880(2)(c). Confidential tax information does not include information that is “in any way made a matter of public record.” KRS 131.190(2)(b). Thus, for example, the name and location of a business are not exempt from disclosure. *See, e.g.*, 07-ORD-255; 01-ORD-63. And under KRS 61.878(4), “[i]f any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.”

When considering a claim of taxpayer privacy under KRS 131.190(1), it is necessary to weigh the “legislatively recognized policy of protecting the affairs of the taxpayer and the taxpayer’s business against the competing public interest of the [Act].” *Dep’t of Revenue v. Eifler*, 436 S.W.3d 530, 533 (Ky. App. 2013). The public interest in disclosure of tax records is the need to determine that “the burden of public expenses is equitably distributed” among taxpayers, that a taxpayer “is meeting his public responsibilities . . . and legal obligation,” and that “public servants are carrying out their duties in an efficient and law-abiding manner.” 10-ORD-184 (quoting *Attorney General v. Collector of Lynn*, 385 N.E.2d 505 (Mass. 1979)). In weighing those competing interests, “[t]he courts continue to favor openness of records and the ability to redact private information which is exempt under the statute.” *Eifler*, 436 S.W.3d at 533; *see also* 23-ORD-199. A tax record that contains both exempt and non-exempt information must be redacted “however limited the information may be once redacted.” 18-ORD-046 (quoting *Kenton Cnty. Fiscal Ct. v. Ky. Enquirer*, No. 2008-CA-002064-MR, 2010 WL 890012 (Ky. App. 2010)).

¹ Insofar as an entity’s unsuccessful application for a tax exemption reveals “the affairs of the person’s business” and is not otherwise a matter of public record, the Department properly withheld the names of the entities whose applications were denied.

² The Department states it also withheld exemption applications that were still pending, under KRS 61.878(1)(i) and (j). However, pending applications are outside the scope of the Appellant’s request.

Here, the Department argues it would violate “common sense” to redact the individual applications so as to leave only the name of the business visible.³ For this reason, it claims the right to make the Appellant “pay for the employee redaction time” if it complies with KRS 61.878(4). However, the Department does not dispute that the Appellant’s request is for a noncommercial purpose. For a noncommercial request, the agency is limited to the fee provided by KRS 61.874(3), “which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but *not including the cost of staff required*” (emphasis added). And the need to redact records does not transform them into a “nonstandardized format” that would allow an agency to recover staff costs under KRS 61.878(3). *See, e.g.,* 20-ORD-004; 17-ORD-244; 08-ORD-183; 95-ORD-82. Therefore, the Department “must discharge its duty under KRS 61.878(4), and must bear the costs attendant to this duty.” 95-ORD-82. Accordingly, the Department violated the Act when it withheld the approved applications in their entirety instead of producing them in redacted form.

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.

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/s/ James M. Herrick
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³ As noted above, the *location* of a business is also public information, not subject to redaction under KRS 131.190(1).