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26-ORD-183

April 29, 2026

In re: Mike Scogin/Scott County School District

Summary: The Scott County School District (“the District”) subverted the intent of the Open Records Act (“the Act”) when it initially failed to properly invoke KRS 61.872(5). However, the District justified its delay on appeal.

Open Records Decision

On either March 23 or March 24, 2026, Mike Scogin (“the Appellant”), submitted an 11-part request to the District. In relevant part, that request sought “emails, texts[,] or memos among school board members and school board members and school administration regarding” the matter identified in the request.¹ In a March 31, 2026, response, citing KRS 61.872(5), the District stated it would produce non-exempt records on April 10, 2026, because the records “come from different sources within the [D]istrict” and because the records must be reviewed and redacted for exemptions such as “FERPA and KRS 61.878(1)(a).”² This appeal followed.

Under KRS 61.880(1), a public agency has five business days to fulfill or deny a request for public records. This period may be extended if the records are “in active use, in storage or not otherwise available,” but the agency must give “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection.” KRS 61.872(5). 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

¹ The remaining 10 parts of the request sought different categories of information. The District correctly denied this portion of the request as seeking information, not records. The Appellant does not challenge this portion of the response on appeal.

² The Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”), is incorporated into the Act by KRS 61.878(1)(k).

of denial of inspection, including but not limited to . . . delay past the five (5) day period described in [KRS 61.880(1) or] excessive extensions of time.”

To start, the Appellant claims the District’s invocation of KRS 61.872(5) was untimely. The Appellant says his request was submitted on March 23, meaning a response was due on March 30. But District says that, although the request is dated March 23, it was not received until March 24, making its deadline to respond March 31. As such, there is a factual dispute between the parties regarding when the District received the request. The Office has regularly found that it is unable to resolve factual disputes between a requester and a public agency, such as when an agency received a request. *See, e.g.*, 23-ORD-276. So here, the Office cannot resolve the dispute regarding when the District received the Appellant’s request.

Turning to the District’s invocation of KRS 61.872(5), its initial response did not provide a “detailed explanation” for why the District could not timely provide the requested records. The District’s explanation was that the “records come from different sources within the [D]istrict” and the records would require redacting pursuant to FERPA and KRS 61.878(1)(a). However, the District did not estimate the number of records implicated by request. “A detailed explanation that neither provides an estimate of the number of records implicated nor explains why such an estimate is impossible tends not to be detailed enough to allow review of the reasonableness of the delay.” 25-ORD-244 (noting that “without knowing the number of records implicated by a request, it may not be possible to determine whether the delay imposed by the agency is reasonable”). Because the District did not explain how many records it needed to review and redact, its initial response did not adequately explain why it could not provide the requested records timely, and therefore, subverted the intent of the Act.

On appeal, the District provides more detailed facts to justify its delay. Under KRS 61.880(2)(c), the public agency has the burden of proof to “substantiate the delay and that it is acting in good faith.” 21-ORD-045. When determining whether a delay is reasonable under KRS 61.872(5), the Office has considered the number of records the requester has sought, the location of the records, and the content of the records. *See, e.g.*, 22-ORD-176; 01-ORD-140; OAG 92-117. Here, the District explains that it reviewed “over a thousand records and thousands of pages of records” for responsiveness and then for applicable exemptions. Moreover, the District identified FERPA as one applicable exemption. The Office has previously recognized that the law governing confidentiality is a factor in determining whether a delay is reasonable. *See, e.g.*, 22-ORD-176 (recognizing that a violation of FERPA could result in a loss of federal funding). Ultimately, the District sought a delay of only eight business days to review over a thousand records and make mandatory redactions under FERPA. This delay is reasonable. Therefore, the District has met its burden of proof to justify its delay in producing records.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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
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/s/ Zachary M. Zimmerer
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Distributed to:

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