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26-ORD-214

May 14, 2026

In re: Jennifer Mortenson/Cabinet for Health and Family Services

**Summary:** The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) by failing to respond to a request under the Act within five business days. The Cabinet violated the Act when it initially failed to provide a “detailed explanation” to properly invoke KRS 61.872(5) to delay access to public records. However, the Cabinet justified its delay on appeal.

***Open Records Decision***

On April 2, 2026, Jennifer Mortenson (“Appellant”) submitted a records request to the Cabinet for “the fatality file, case file, investigation, findings, internal reviews, communications, MDT meeting notes, prior and post CPS familial involvement for [a specific child], date of birth 6/30/16, death November 2016.”<sup>1</sup> On April 13, 2026, the Cabinet notified the Appellant that “[p]ursuant to KRS 61.872(5), the records [she] requested are not readily” available and that the Cabinet “is searching for responsive records and will review any responsive records for compliance with” the Act, and that “[d]ue to the large number of records to search through for responsiveness, the [Cabinet] will need until May 13, 2026, to respond to your request.” This appeal followed.

Upon receiving a request to inspect records, a public agency must “determine within five (5) days, excepting Saturdays, Sundays, and *legal holidays*, 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.” KRS 61.880(1) (emphasis added). This time may be extended under KRS 61.872(5)

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<sup>1</sup> On April 2, 2026, the Cabinet confirmed receipt of the Appellant’s request via an unsigned, automated response.

when records are “in active use, in storage or not otherwise available,” but only if the agency “immediately notif[ies] the applicant” and 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.” The Office has recognized that persons requesting a large volume of records should “expect reasonable delays in records production.” 12-ORD-228. However, the reasonableness of such a delay “is a fact-intensive inquiry.” 21-ORD-045.

Here, the Appellant submitted her request on April 2, 2026, after normal business hours. Ordinarily, requests for records submitted after business hours are considered to have been received by an agency the following business day. *See, e.g.*, 21-ORD-113; 25-ORD-382. But the next day, April 3, 2026, was Good Friday, a legal holiday. *See* KRS 18A.190(1)(c) (“State offices shall be closed and state employees shall be given a holiday on” Good Friday). Accordingly, the Appellant’s request was not received by the Cabinet until Monday, April 6, 2026, and its deadline to respond was therefore April 13, 2026. Because the Cabinet did respond on April 13, 2026, the Cabinet’s response was timely and complied with KRS 61.880(1).

Turning to the Cabinet’s April 13, 2026, response, the Cabinet notified the Appellant that “[p]ursuant to KRS 61.872(5), the records you have requested are not readily [available],” and that “[d]ue to the large number of records to search through for responsiveness, the [Cabinet] will need until May 13, 2026, to respond to your request.” A vague statement regarding the volume of records requested is not a “detailed explanation” under KRS 61.872(5). *See, e.g.*, 22-ORD-164; 17-ORD-194. Thus, the Cabinet’s April 13 response violated the Act by failing to properly invoke KRS 61.872(5) to delay its final response.

On appeal, the Cabinet 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. The Cabinet explains that the “requested records include records from over thirty-five (35) years ago” and “totaled almost 4,500 pages.” Thus, the Cabinet argues that it “would need four (4) weeks in order to redact the almost 4,500 pages.” In 25-ORD-235, the Office found a delay of six weeks was reasonable to review and produce 5,800 records. Here, the Appellant’s request implicated 1,300 fewer pages of records and the Cabinet sought two fewer weeks of delay. Moreover, the Cabinet explains that, because the request sought records that were 35 years old, some had to be retrieved from the Kentucky Department for Libraries and Archives. Given the Office’s prior holding in 25-ORD-235 and the need to retrieve the requested records, this delay was not unreasonable.

Therefore, the Cabinet has met its burden of proof to justify its delay in producing the 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](mailto:OAGAppeals@ky.gov).

**Russell Coleman**  
**Attorney General**

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