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26-ORD-225

May 20, 2026

In re: Kelly Read/Boone County School District

Summary: The Boone County School District (“the District”) did not violate the Open Records Act (“the Act”) when it properly invoked KRS 61.872(5) to delay its final response to a request for records.

Open Records Decision

On March 2, 2026, Kelly Read (“the Appellant”) submitted a five-part request to the District.¹ In a response dated March 6, 2026, the District stated it had begun compiling responsive records but that “the request has returned hundreds of pages of records.” Thus, citing KRS 61.872(5), the District stated that it would issue a final response on April 1, 2026, due to the “significant amount of documentation identified by the District, the need for thorough review and redaction of documents to remove all privileged and confidential information, and because these records are further “not in active use, in storage, or not otherwise available.” 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

¹ Specifically, the request sought: (1) “Records indicating the total dollar amounts paid to the designated Boone County Board of Education (“Board”) attorney(s) for each of the last six fiscal years”; (2) “Records of all itemized invoices submitted to the Board for payment by the designated board attorney during each of the last six fiscal years”; (3) communication records “between the Superintendent and Board members between June 1, 2025, and the date of this request regarding Boone County Education Association’s (BCEA’s) request for the Board to adopt a maternity leave policy as required by KRS 161.155(9)(b)”; (4) “Records showing the total number of maternity leave days taken by Board district certified employees for each of the 2024-25 and 2025-26 school years to date, including the number of certified staff maternity days taken that were paid and the number of certified staff maternity leave days that were unpaid for each year”; and (5) “Records showing the total number of sick leave days taken by Board district certified staff which were not covered by a paid substitute teacher for each of the 2024-25 and 2025-26 school years.”

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 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.”

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. Weighing these factors is a fact-intensive analysis. For example, this Office has found that a four-month delay in providing 5,000 emails for inspection was not reasonable under the circumstances. *See, e.g.*, 21-ORD-045. However, the Office has also found that a six-month delay was reasonable to review 22,000 emails for nonexempt information. *See, e.g.*, 12-ORD-097. Further, the Office has recognized that a public agency may show its good faith by responding to a request that implicates many records by releasing those records in batches on a rolling basis. *See, e.g.*, 21-ORD-045. Ultimately, the agency carries the burden of proof to sustain its actions. KRS 61.880(2)(c).

On appeal, the District elaborates on the reasons for its delay. To start, it explains that it believes at least 1,000 billing entries must be reviewed for responsiveness to the first two parts of the request. However, the billing entries must first “be retrieved in hard copy from the District’s storage warehouse.” Then, the District must review those billing entries to determine whether the legal services they document were performed by a “Board Attorney” as contemplated by the request. Finally, the District must make necessary redactions of the billing entries’ “itemized narrative” to remove information exempt under “the attorney-client privilege, work product doctrine, and/or controlling privacy laws.” The District also states that “narratives containing personal identifiers for students and staff will require redaction pursuant KRS 61.878(1)(a), (k), and (l).”

Next, the District explains that its search for records responsive to the third part of the request “yielded nearly 497 pages of emails, each of which must be individually reviewed to determine whether it is responsive.” The District explains that the topic of maternity leave “has also been discussed extensively with the Board Attorney,” meaning that a “review for privilege will also be required.”

Here, the District sought a delay of 18 business days to complete its response to the Appellant’s request. This delay amounts to three and a half weeks. In 25-ORD-235, the Office found a delay of six weeks was reasonable to review and produce 5,800 records. In 26-ORD-214, the Office found a delay of four weeks was reasonable to review and produce 4,500 records. The volume of records sought here is not

comparable to the volume sought in those decisions. However, the District explained in great detail why it could not quickly provide the legal billing records requested by the Appellant. Specifically, the District explained that the location and format of those records necessitate a physical search at the District's storage warehouse before the District undergoes a three-part review to determine whether a record (1) is responsive, (2) contains attorney-client privileged information or work-product, and (3) contains personal identifiers for students or staff. Therefore, by explaining why the format and location of the records sought necessitates its delay, the District has adequately explained that its delay is reasonable. Therefore, the District did not violate the Act by delaying its final response to April 1, 2026.²

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.

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/s/ Zachary M. Zimmerer
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Distributed to:

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² On appeal, the District explains that it does not possess records containing the information responsive to the fourth and fifth parts of the request. However, the District states that it is working to compile that information for the Appellant. The Act "does not require public agencies to carry out research or compile information to conform to a given request." OAG 89-45. Nor is a public agency "obligated to compile a list or create a record to satisfy an open records request." OAG 76-375. Therefore, the Office finds no violation of the Act when the District stated it needed additional time to compile the information sought in the fourth and fifth parts of the request.