COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

26-ORD-250

June 2, 2026

In re: Robert Perkins/Jefferson County Board of Education

Summary: The Jefferson County Board of Education ("the Board") 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 Board subverted the intent of the Act, within the meaning of KRS 61.880(4), by unreasonable delay when it failed to show an additional delay of eight business days was necessary.

Open Records Decision

On March 17, 2026, Robert Perkins ("the Appellant") submitted a request to the Board for "all communications involving" six named individuals since July 1, 2024, "[r]egarding: Robert Perkins, Eric Perkins, Louisville Lightning Adaptive Sports, trespass notice." On March 24, 2026, the fifth business day after it received the request, the Board issued a response that cited KRS 61.872(5) and stated there would "be a delay in" providing records until April 3, 2026. Specifically, the Board stated "a computer aided search [had] identified 111 potentially responsive messages [that] contain a mixture of nonexempt and exempt information, including attorney-client privileged communications exempted from disclosure by KRS 61.878(1)(k), preliminary drafts and opinions exempted from disclosure by KRS 61.878(1)(i) and (j), and potentially, student information exempted from disclosure by the Family Educational Rights & Privacy Act, the Kentucky Family Education Rights & Privacy Act, and KRS 61.878(k) [*sic*]." The Board claimed to need "additional processing time" in order "to process the files into a format capable of redaction, then redact the exempt information." 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" 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" (emphasis added). Here, the Board noted generally that KRS 61.872(5)

"applies to circumstances where the parameters of the request are broad, the records implicated contain a mixture of exempt and nonexempt information, and the records are difficult to locate and retrieve." However, the Board did not explain how the Appellant's specific request was "broad" or how the requested records were "difficult" to retrieve.

The Board did explain that the records contained a mixture of exempt and nonexempt information. But the redaction process required under KRS 61.878(4) is an ordinary part of fulfilling an open records request, and "the Act contemplates [it] should be completed within five business days." 25-ORD-076. Although extensive redactions may take so much time that the records cannot be produced within five business days, the agency must explain why the stated length of the delay is necessary. *See, e.g.,* 22-ORD-166; 21-ORD-045. Here, the Board did not give a "detailed explanation" for why a delay of eight additional business days was required to review and redact 111 communications. Because its response did not comply with KRS 61.872(5), the Board violated the Act.

Under KRS 61.880(4), a person who "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), may appeal to the Attorney General as if the record had been denied. A public agency subverts the intent of the Act within the meaning of KRS 61.880(4) when it fails to meet its burden of proof under KRS 61.880(2)(c) that a delay in producing records is reasonable. *See, e.g.,* 21-ORD-045. In determining whether a delay is reasonable, the Office considers such factors as the number, location, and content of the requested records. *Id.* "Weighing these factors is a fact-intensive inquiry." *Id.*

Here, the Board claims it required eight additional business days to redact 111 records, in addition to the five business days it purportedly required to locate them with a "computer aided search." "At all times, a public agency must substantiate the need for any delay and that it is acting in good faith." 23-ORD-311. Even assuming the Board required the full five days to locate the records (which has not been proved), the Board has not explained why it needed eight *additional* business days to redact 111 records, a rate of less than 14 records per day. Accordingly, the Board has not met its burden of proof to justify its delay. *See, e.g.,* 24-ORD-063. Thus, the Board subverted the intent of the Act, within the meaning of KRS 61.880(4), by delaying access to the requested records beyond the five business days provided in KRS 61.880(1).

The Appellant also claims the Board, in its March 24 response, violated the Act by "invoking privilege without a privilege log." However, the Board's March 24 response was not a final response to the Appellant's request, but rather, merely set out the types of redactions the Board anticipated would be part of its final response.

Therefore, any claim that the Board improperly invoked the attorney-client privilege is not ripe for review in this appeal.[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

#381

Distributed to:

Robert Perkins
C. Tyson Gorman, Esq.
Amanda Herzog, Esq.
Brian Yearwood, Superintendent
Corrie Shull, Chair

[1] The Appellant also claims the Board's final response contained "significant gaps in the production" of records. Because the Board's final response is not part of the record on appeal, this argument is likewise not ripe for review.