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26-ORD-267

June 10, 2026

In re: Ashley Elgin/Department of Corrections

Summary: The Department of Corrections (“the Department”) subverted the intent of the Open Records Act (“the Act”) when it failed to produce records within its own self-imposed deadline.

Open Records Decision

On April 10, 2026, Ashley Elgin (“the Appellant”) submitted a 35-part request for records related to the in-custody death of her husband. On April 13, 2026, the Department stated that it was “complying with [the] request” but that its final response would be issued on May 11, 2026, “[d]ue to the voluminous nature of [the] request.” On May 11, 2026, at 5:33 p.m., having received no further response from the Department, the Appellant initiated this appeal.

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 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.”

The Appellant alleges that the Department failed to respond to her request by May 11, 2026, the date on which it stated it would issue its final response. For its part, the Department explains that it did, in fact, respond to the Appellant on May 11, 2026, and informed the Appellant that it needed one additional week to finish compiling and reviewing responsive records. Thus, the Department says it did not violate the Act.

The Office disagrees. The undisputed record in this case is that the Department stated it would respond on May 11, but on that date, it instead issued a second extension. The Office has found that a public agency does not comply with KRS 61.872(5) when it notifies the requester of the earliest date on which requested records would be available but then misses its self-imposed deadline. *See, e.g.*, 25-ORD-086; 23-ORD-079; 21-ORD-011. An agency's failure to miss its self-imposed deadline is not resolved by informing the Appellant of that failure and extending its deadline. *See, e.g.*, 25-ORD-385 (finding the agency failed to comply with KRS 61.872(5) when it issued three successive extensions of its response deadline). Therefore, the Department subverted the intent of the Act by delay and excessive extensions of time, within the meaning of KRS 61.880(4), when it failed to make a final disposition of the Appellant's request by the date on which it said the records would be made available.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

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