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-270

June 11, 2026

In re: Jimmy Shaw/Kentucky Public Pensions Authority

Summary: The Kentucky Public Pensions Authority ("the Authority") 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 by KRS 61.872(5). The Authority subverted the intent of the Act, within the meaning of KRS 61.880(4), when it delayed access to readily available records without proper justification.

Open Records Decision

On April 27, 2026, Jimmy Shaw ("the Appellant") submitted a multi-part request to the Authority for various records related to locality premiums for certain job classifications dating back to July 1, 2019.[1] The following day, the Authority responded that "[d]ue to the size and nature of the request additional time [would] be

[1] Specifically, the Appellant requested "[a]ll records submitted [to] the Personnel Cabinet in support of locality premium requests for Enterprise and Technology Services or IT classifications, including" eight specific job titles; "[a]ll records showing whether [the Authority] considered submitting, intended to submit, declined to submits, or did not submit the Network Engineer classification [for] consideration"; "[a]ll emails, memoranda, notes, meeting materials, Teams messages, or other communications between [certain internal offices] or the Personnel Cabinet concerning locality premiums for" certain classifications; "[a]ll Business Request records, tickets, submissions, attachments, comments, routing history, approval history, status history, and related correspondence" for such premium requests; "[r]ecords showing locality premium payments actually paid to [Authority] employees from February 16, 2025 to the present"; all "communications [to] employees informing them of approval, implementation, effective date, rescission risk, payroll treatment, or other terms of locality premiums for IT classifications"; all "records showing the estimated or actual cost of locality premiums for IT classifications"; all "records relating to classification review, job review, reclassification review, compensation review, salary analysis, recruitment difficulty, retention concerns, market comparison, or pay equity analysis for Network Engineer"; "[r]ecords identifying the organizational unit, position number, assigned work county, and reporting structure used [for] Network Engineer positions for locality premium, classification, payroll, or compensation purposes"; and "[a]ll records showing any adjustment, rescission, discontinuation, renewal, continuation, expansion, or modification [of] locality premiums for IT classifications."

required" and the Authority would provide records on a "rolling" basis "if any responsive documents" were identified.

On that same date, in response to an inquiry from the Appellant, the Authority stated it was "unable to determine the earliest date on which" records would be available, as the request had only been received the previous day. The Authority further stated it did not yet "know whether any documents [would] need to be withheld or redacted," although it would deny "access to any legal communication, as these are protected." In further correspondence to the Appellant on April 28, 2026, the Authority stated it was "diligently determining if any responsive documents exist, if so where they are (e.g. underground storage, back-up computer files), and who needs to be asked to search for any documents." The Authority noted it would also have to determine where records were "housed" from the tenures of various prior officers who had "not been employed by [the Authority] for a period of time." In reply, the Appellant asked the Authority to provide "an estimated timeframe for the first production and identification of any statutory exemptions" once it "determine[d] that responsive documents do exist."

On May 11, 2026, having received no further response, the Appellant requested an update. In response, the Authority stated, "HR will require at least 3-4 weeks minimum to provide Legal possible responsive documents. Once documents are received Legal will review and redact as necessary, and then send responsive documents." The Authority further stated the IT department had been asked "to run a search of specific terms within [the] request against [the Authority's] database," which would "take several weeks." In response to a follow-up inquiry from the Appellant for more specific information, the Authority stated the earliest date the Appellant would "receive documents from any HR search, if anything exists, [would] be July 31, 2026," and the "information requested from IT[,] if anything exists, [would] be provided to [him] by August 30, 2026."

On May 21, 2026, the Authority provided the Appellant what it described as "the first set of responsive document[s] from HR[,] consisting solely of Human Resources emails" with certain redactions that are not at issue. At the same time, the Authority informed the Appellant of anticipated dates during June 2026 for "the first production" of certain categories of records located by IT. 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," but only 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." In light of this provision, the Attorney General has recognized that persons requesting large volumes of records should "expect reasonable delays in

records production." 12-ORD-228. However, a vague statement about the "nature" or volume of a request is not a "detailed explanation" under KRS 61.872(5). *See, e.g.,* 22-ORD-164; 17-ORD-194. Here, the Authority's initial explanation for delay was merely "the size and nature of the request." This was not a "detailed explanation" explaining why the stated length of the delay was necessary. *See, e.g.,* 24-ORD-273. In subsequent correspondence, the Authority explained that some records might be in "underground storage" or stored in different locations due to their age. However, the Authority did not provide, within five business days, the earliest date when any records would be available.[2] Because its response did not comply with KRS 61.872(5), the Authority violated the Act.

In addition, a requester who believes the agency's delay is unreasonable may seek the Attorney General's review by alleging the agency subverted the intent of the Act by "delay past the five (5) day period described in [KRS 61.880(1)]." KRS 61.880(4). In determining how much delay is reasonable, 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. *See* 21-ORD-045. Thus, for example, when an agency asserts that some records are "stored in a different location," it must explain "how many records [are] implicated or how much time [is] needed to retrieve and review them." 26-ORD-151. Ultimately, the agency bears the burden of proof to sustain its action. KRS 61.880(2)(c).

Here, the Authority advised the Appellant that some records were in storage. Further, on appeal, the Authority states that "the search for records required IT to run the search terms through three (3) separate servers" and its projected dates of July 31 and August 30 were "[b]ased on HR and IT's estimates of at least a month to determine if any responsive records existed, and if they did, to provide the records to the Legal department, who would then have to review the records, determine if they were responsive to Appellant's request, and, if responsive, determine if any redactions or exemptions needed to be applied." However, "the Act contemplates that all those actions should be completed within five business days," except for those records that are in storage or otherwise unavailable. 25-ORD-076. Here, it does not appear that *all* the requested records were in offsite storage or in unknown locations. The Authority has not provided sufficient information about the number or content of the records to establish that a delay was warranted for those records that were readily available, nor has it explained the basis for "HR and IT's estimates of at least a month" to locate those records. Therefore, the Authority subverted the intent of the

[2] On appeal, the Authority claims it informed the Appellant on May 1, 2026, "that it would take at least several weeks to a month to gather all requested records." However, there is no evidence in the record of any such communication. Moreover, "at least several weeks to a month" is not a "date" as required by KRS 61.872(5).

Act, within the meaning of KRS 61.880(4), by delay past the five business days provided in KRS 61.880(1).

On the other hand, the Authority has established that some of the requested records were in storage and, therefore, not readily available. Moreover, the Authority has demonstrated its good faith by providing records to the Appellant on a "rolling" basis as they are retrieved. *See, e.g.,* 25-ORD-076; 21-ORD-045. Accordingly, the Office does not find that the Authority subverted the intent of the Act by unreasonable delay as to those records that were in storage or otherwise not immediately 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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

Jimmy Shaw
Victoria A. Hale, Esq.
Michael Board, Esq.
Ryan Barrow
Erin Surratt