



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-277

June 15, 2026

In re: Tina Burnell/Louisville Metro Government

Summary: The Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it failed to timely respond to a request made under the Act and when it failed to carry its burden that a request is unreasonably burdensome under the Act.

Open Records Decision

On May 4, 2026, Tina Burnell (“Appellant”) submitted a request to Metro for “the memo sent out by” Metro’s Chief of Police “to all sworn officers dated April 2, 2026[,] on the subject of the Summer Task Force - Temporary Task Assignment (TDY) plan, along with any related correspondence on that subject.” On May 15, 2026, having received no response from Metro, the Appellant initiated this appeal.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . 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.” Here, the Appellant submitted a request to Metro and, more than five days later, she had yet to receive a response. On appeal, Metro does not dispute the Appellant’s claims or assert it timely responded to her request. As a result, Metro violated the Act when it did not respond timely to a request for records.

On appeal, Metro states that it “responded to [the Appellant’s] request on May 18, 2026, by providing the requested Memo” from the Chief of Police and that the Appellant’s “request for ‘any related correspondence on that subject’ was denied as overly burdensome pursuant to KRS 61.872(6).” Metro explained that “[t]he search returned 6,955 e-mails” and a “review of an email will take 3 – 5 minutes to determine if any of the information in the record is exempt which would require redaction of

such information per the [Act].” Metro asserts that “[i]n this case, it would result in [its] review taking from 347.75 to 579.58 hours” and one dedicated staff person “between 8.7 weeks and 14.5 weeks to fulfill the request.”

Under KRS 61.872(6), “[i]f the application places an unreasonable burden in producing public records . . . the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.” “When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction.” 22-ORD-221. Of these, the number of records implicated “is the most important factor to be considered.” 22-ORD-182.

In 14-ORD-109, the Office found unreasonably burdensome a request for “at least 6,200” emails exchanged between two school systems. Although that number is similar to the number of pages of emails responsive to the Appellant’s request, there are significant distinguishing factors. The records in 14-ORD-109 implicated the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”), which carries financial consequences for educational institutions that fail to adhere to strict confidentiality. Furthermore, the review in 14-ORD-109 required review by multiple agency employees, including lower-level employees with “the personal knowledge needed for a FERPA review,” supervisors, and legal counsel, “which could reasonably multiply the time and effort” involved. Additionally, the request in 14-ORD-109 would have necessitated a search beyond the 6,200 emails identified as a minimum, because some emails were stored offline, thus requiring every individual workstation of every school district employee to have to be searched for additional records. None of those factors are present here.

As support for the amount of time it estimates fulfilling the request would require, Metro explains that it would need to review thousands of electronic files for potential redactions and dedicate an employee for several weeks to reviewing the thousands of responsive records and examining them for potential redactions. Specifically, here, Metro indicates 6,955 emails were implicated by its search, and those records will need to be reviewed for potential redactions. However, the Act requires public agencies to separate exempt from nonexempt material in every case. See KRS 61.878(4). “Thus, the obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden.” *Commonwealth v.*

Chestnut, 250 S.W.3d 655, 665 (Ky. 2008). As the Office has long recognized, “it is the legislative intent that public employees exercise patience and long-suffering in making public records available for public inspection.” OAG 77-151.

Here, Metro only points to the number of records implicated by the request. It has not indicated that those records contain exempt materials or explained how the format of the records will cause an additional burden in compiling the records. Thus, under these facts, Metro has not shown by clear and convincing evidence that the Appellant’s request imposes an “unreasonable burden” within the meaning of KRS 61.872(6).

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.

Russell Coleman
Attorney General

/s/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Tina Burnell
Alice Lyon
Nicole Pang
Natalie S. Johnson
Annale Taylor
Donald Haas
Michael Spenlau
Anne Coorsen