



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-278

June 15, 2026

In re: Ann Henson/Garrard County Attorney's Office

**Summary:** The Garrard County Attorney's Office ("the Agency") subverted the intent of the Open Records Act ("the Act"), within the meaning of KRS 61.880(4), when it delayed access to requested records without proper justification. The Agency violated the Act when it failed to identify all records withheld and the nature of the redactions it made. However, the Agency did not violate the Act when it could not provide records that do not exist.

### *Open Records Decision*

On April 8, 2026, Ann Henson ("the Appellant") submitted a request to the Agency for the "[e]ntire personnel files" of five individuals and asked that the records be provided by email. In a timely response on April 14, 2026, the Agency issued a response stating the records had "been redacted in accordance with KRS 61.878(1)(a), and certain documents—such as tax records, life insurance paperwork and emergency contact forms—ha[d] been withheld under this provision." The Agency further asked the Appellant to "schedule a time to review the materials" on the Agency's premises and stated copying would not be allowed. That same day, the Appellant replied to the Agency's response, asserting her right to obtain copies of the records. On April 16, 2018, the sixth business day after it received the request, the Agency emailed to the Appellant what it described as "all personal [sic]<sup>1</sup> records responsive to [her] request." This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant or deny the request. KRS 61.880(1). A public agency may delay access to responsive records beyond five business days if such records are "in active use, storage, or not otherwise available." KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must

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<sup>1</sup> Given the context of the request, the Office presumes "personal" was a typographical error, and the intended adjective was "personnel."

also notify the requester of the earliest date on which the records will be available and provide a detailed explanation for the cause of the delay. Here, however, the Agency did not invoke KRS 61.872(5), but prepared the records for inspection in a timely manner. The delay was occasioned by the Agency's request that the Appellant inspect the records in person.

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. Ultimately, the agency bears the burden of proof to sustain its action. KRS 61.880(2)(c).

Here, although the Agency granted *inspection* within five business days, it did not provide the requested *copies* until the sixth business day. This delay in providing copies was not because the records were "in active use, storage, or not otherwise available," but because the Agency claimed the Appellant was not entitled to copies. But under KRS 61.872(3)(b), "a person whose residence or principal place of business is outside the county in which the public records are located" may receive copies of public records in lieu of inspection on the agency's premises. As is apparent from the face of her request, the Appellant lives outside Garrard County. Because the Appellant was clearly entitled to receive copies in lieu of inspection, the Agency's delay was not reasonable. Accordingly, the Agency subverted the intent of the Act, within the meaning of KRS 61.880(4), when it delayed the Appellant's access to copies of public records past the five business days provided by KRS 61.880(1).<sup>2</sup>

The Appellant further claims the Agency's response failed to identify all the records it withheld under KRS 61.878(1)(a), whether they "were withheld in full or in part," and how the exception applied to the records withheld. Under KRS 61.880(1), an agency response denying inspection of public records, in whole or in part, must "include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies *to the record withheld*" (emphasis added). Thus, the agency must first "actually identify the records being withheld" and then "explain how a cited exception applies to the very records that were identified as being withheld." 21-ORD-168 (citing *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996)). For the same reason, the agency must "identify

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<sup>2</sup> On appeal, the Agency belatedly claims the delay was reasonable because it has a small staff and the records "required time and attention to review and redact." However, it is apparent that the records were reviewed and redacted within the five-day period, and thus a shortage of staff was not responsible for the delay. *See also* 25-ORD-013; 22-ORD-167; 19-ORD-188 n.1 (noting that staffing issues do not justify delay).

[the] information redacted from the records,” and not merely cite an exception. 17-ORD-146. Here, the Agency stated the records had been “redacted” under KRS 61.878(1)(a), but did not state what information was redacted.<sup>3</sup> The Agency further stated documents “*such as* tax records, life insurance paperwork and emergency contact forms” (emphasis added) had been withheld under KRS 61.878(1)(a), but did not identify every document withheld.<sup>4</sup> Therefore, the Agency violated the Act.<sup>5</sup>

Finally, the Appellant claims the records provided were “incomplete.” Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to make a *prima facie* case that additional records do exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the records do or should exist, “then the agency may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). A requester must provide some evidence to make a *prima facie* case that additional records exist, such as the existence of a statute or regulation requiring the creation of the records or other factual support for the existence of the records. *See, e.g.*, 21-ORD-177; 11-ORD-074. A requester’s bare assertion that certain records exist or should exist is insufficient to make a *prima facie* case that the records actually do exist. *See, e.g.*, 22-ORD-040.

Here, the Appellant claims the volume of records provided is “inconsistent with what would ordinarily be expected of complete personnel records maintained by a public agency under standard administrative and HR retention practices.” The Agency, however, states it “does not maintain detailed personnel files” and is “not aware of any statutory or regulatory requirement mandating that such records be kept” by a County Attorney’s office. Because the Appellant’s argument consists of a bare assertion that more records should exist, she has not made a *prima facie* case that the production of records was “incomplete.” Therefore, the Agency did not violate the Act when it could not provide records that do not exist.

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

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<sup>3</sup> On appeal, the Agency states it redacted “Social Security number[s], addresses, dates of birth, and information pertaining to family members.”

<sup>4</sup> On appeal, the Agency states it withheld “tax documents (I9, KR, and W4), employee benefit enrollment forms, emergency contact forms, life insurance enrollment forms, copies of social security cards and drivers licenses, and employee background check applications.”

<sup>5</sup> Because the Appellant brought this appeal on the basis of the Agency’s failure to identify the withheld records and specific redactions, the applicability of KRS 61.878(1)(a) to the withheld material is not ripe for review.

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:

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