



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-307

July 14, 2026

In re: Zachary Tackett/Cabinet for Economic Development

Summary: The Cabinet for Economic Development (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it denied a request that posed an unreasonable burden under KRS 61.872(6).

Open Records Decision

Zachary Tackett (“Appellant”) submitted to the Cabinet a request seeking “any records identifying Kentucky counties that are currently being evaluated, considered, recruited, studied, reviewed, or otherwise under consideration for prospective: [d]ata centers, [a]rtificial intelligence facilities, [h]yperscale computing facilities, [c]loud computing facilities, [c]ryptocurrency or digital asset mining facilities, [and] [o]ther projects requiring electric demand exceeding 50 megawatts.” The Appellant further stated that his “request includes, but is not limited to,” seven additional categories of records.¹

In response, the Cabinet denied the request under KRS 61.872(6) because it implicated 14,730 pages of records containing materials exempt under KRS 61.878(1)(c)2.b., KRS 61.878(1)(c)1., and KRS 61.878(1)(a), (i), and (j). This appeal followed.

On appeal, citing KRS 61.872(6), the Cabinet maintains that fulfilling the Appellant’s request would be unduly burdensome. Under KRS 61.872(6), a public agency may deny a request to inspect records “[i]f the application places an

¹ Those categories are: (1) “County-level location information”; (2) “Project code names”; (3) “Infrastructure assessments or summaries”; (4) “Site evaluation summaries”; (5) “Internal reports identifying counties under consideration”; (6) “Communications discussing counties being evaluated for such projects”; and (7) “Records identifying whether projects remain active, inactive, approved, withdrawn, or under review.”

unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency.” However, an agency must substantiate its denial “by clear and convincing evidence.” *Id.*

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. *See, e.g.*, 97-ORD-088 (finding a request implicating thousands of physical files pertaining to nursing facilities to be unreasonably burdensome, where the files were maintained in physical form in several locations throughout the state, and each file was confidential under state and federal law). Of these, the number of records implicated “is the most important factor to be considered.” 22-ORD-182. In addition to these factors, the Office has found that a public agency may demonstrate an unreasonable burden if it does not catalog its records in a manner that will permit it to query keywords mentioned in the request. *See, e.g.*, 96-ORD-042 (finding that it would place an unreasonable burden on the agency to manually review thousands of files for the requested keyword to determine whether such records were responsive). When a request does not “precisely describe” the records to be inspected, KRS 61.872(3)(b), the chances are higher that the agency is incapable of searching its records using the broad and ill-defined keywords used in the request.

The Cabinet explains that the parameters of the Appellant’s request cause it to be unreasonably burdensome to compile the requested records. According to the Cabinet, the request, as written, seeks “any kind of record, from any point in time, from any individual within the Cabinet that could arguably ‘identify’ a Kentucky county related to one of the six project types listed.” The Cabinet states that it employs 76 individuals and that to complete a thorough search it must review all its employees’ records to determine if they identify a county and related project. Indeed, the Office has previously agreed the number of people employed by an agency is relevant in evaluating the burden of a particular request. *See, e.g.*, 25-ORD-150; 24-ORD-048.

The Cabinet further explains that it conducted an initial limited search to determine the breadth of the Appellant’s request. The Cabinet explains it searched for only emails sent to or from “the four . . . employees most likely to have records pertaining to the request” using search terms it created itself. That search resulted in 14,730 pages of responsive records. The Cabinet further explains that many of the

email records contain “records that are confidential or proprietary in nature [and] disclosed in conjunction with the companies’ applications for incentives” under KRS Chapter 154, which are exempt under KRS 61.878(1)(c)2.b. Similarly, the Cabinet explains that many records are also exempt because they contain “information confidentially disclosed to the Cabinet and generally recognized as confidential or proprietary that would permit an unfair commercial advantage to competitors of the companies if openly disclosed” and are exempt under KRS 61.878(1)(c)1. The Cabinet also explains that the records contained “personal identification information” exempt under KRS 61.878(1)(a) and “preliminary drafts, notes, correspondence, and memoranda of opinions and policy formulations not intended to give notice of final action of a public agency” exempt under KRS 61.878(1)(i) and (j).

Finally, the Cabinet estimates it would take roughly 737 hours to review and redact the responsive record. In 23-ORD-076, the Office found a public agency had met its burden of “clear and convincing evidence” that it would be unreasonably burdensome to redact 71,000 records at 20 seconds per record, for a total of 394 hours of staff time. Here, the estimated time articulated by the Cabinet to review the records is much greater than that in 23-ORD-076. *See also* 25-ORD-211; 25-ORD-150; 25-ORD-042. Accordingly, the Cabinet has met its burden of proof under KRS 61.872(6) and, therefore, did not violate the Act when it denied the Appellant’s request.

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

#506

Distributed to:

Zachary Tackett
Chad Zimlich, Esq.