



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-315

July 15, 2026

In re: Ashley Elgin/Department of Corrections

Summary: The Department of Corrections (“the Department”) 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 Department subverted the intent of the Act, within the meaning of KRS 61.880(4), when it did not establish on appeal that the additional delay was reasonable.

Open Records Decision

On Saturday, June 6, 2026, Ashley Elgin (“the Appellant”) submitted a lengthy request to the Department for over 100 categories of records relating to her husband, who died while in custody at the Eastern Kentucky Correctional Complex. Having recently been appointed as administratrix of her husband’s estate, the Appellant sought “all records previously denied, withheld, or redacted” in response to her five requests made before her appointment on “privacy, or similar grounds.” On June 15, 2026, the fifth business day after receiving the request, the Department responded that it “need[ed] additional time under KRS 61.872(5) in which to identify, locate, review, and redact all existing, responsive, and nonexempt records.” Specifically, the Department stated that “[d]ue to the voluminous nature of [the] request, which implicates multiple categories of records,” it was still “in the process of gathering all potentially responsive records from the institution,” and “[t]herefore, the records [were] not readily available.” The Department further stated it must “determine responsiveness” and redact “any sensitive information, such as personal information that is exempt under KRS 61.878(1)(a), or information the disclosure of which would pose a security threat under KRS 197.025(1), incorporated into the [Act] by KRS 61.878(1)(l).” The Department gave August 25, 2026, as the date by which it would “provide a final response.” 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 “volume” of records potentially responsive to a request is not a “detailed explanation” under KRS 61.872(5). *See, e.g.*, 22-ORD-164; 17-ORD-194. Further, the redaction process required under KRS 61.878(4) is an ordinary part of fulfilling an open records request. Although extensive redactions may take so much time that the records cannot be produced within five business days, the agency must explain why the stated length of the delay is necessary. *See, e.g.*, 22-ORD-166; 21-ORD-045. Retrieving records, determining responsiveness, and making redactions are steps that “should be completed within five business days,’ except for those records that are in storage or otherwise unavailable.” 26-ORD-270 (quoting 25-ORD-076).

Under KRS 61.880(2)(c), “[t]he burden of proof in sustaining the action shall rest with the agency.” Here, the Department claims the Appellant’s request “was so voluminous” that it could not “identify within five days even the number of pages implicated” without “disrupt[ing]” its normal “open records operations.” However, the Department does not dispute that it had processed five previous requests from the Appellant and determined that certain records should be withheld or redacted. Considering that history, the Department has not explained why it could not, within five business days, estimate at least a minimum number of records implicated by the current request. Accordingly, the Department violated the Act when it failed to provide a detailed explanation for its delay as required by KRS 61.872(5).

In addition, a requester who believes the agency’s delay is unreasonable may seek the Attorney’s 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). In determining whether a delay is reasonable, the Office considers such factors as the number, location, and content of the requested records. *See* 21-ORD-045. “Weighing these factors is a fact-intensive inquiry.” *Id.*

Here, the Department states the records consist of “approximately 2,000 pages . . . requiring careful review [for] highly sensitive security information.” Specifically, the Department states that many of the requested records “potentially contain information regarding policy and procedures, camera locations, investigat[ion] techniques, transfer procedures and security arrangement[s],” the disclosure of which would pose a security risk under KRS 197.025(1).¹ In addition, the Department asserts records “could contain personal information of other inmates” subject to

¹ Under KRS 197.025(1), “no person shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.”

privacy protection, such as their medical information, dorm assignments, or “observations of [correctional] staff regarding behavior and condition of inmates.” Finally, the Department claims the records could contain information made confidential under other statutes, such as the Prison Rape Elimination Act.

The Appellant does not dispute that the requested records may be subject to some redactions on these grounds. However, the Department has the burden of showing that its delay of 49 additional business days to review and redact the records was reasonable. In 21-ORD-045, the Office found an agency had not met its burden of proof when it did not explain why it could only review and redact emails at the rate of 300 per week. Here, similarly, the Department has not explained why it needs 49 business days to review and redact 2,000 pages of records, a rate of only about 200 pages per week. The Department notes the request also includes “video footage and photographs which must be reviewed for responsiveness and a determination regarding potential security threats and [whether] the material can be adequately redacted to allow release.” However, the Department provides no information about the amount of photographs and video footage it must review, or how long that process takes. *Cf.* 25-ORD-128 (agency specified the number of hours of footage and the time required to redact each hour of video). Given the agency’s burden of proof, the Department has not established that its additional delay of 49 business days is reasonable. Therefore, the Department subverted the intent of the Act within the meaning of KRS 61.880(4).

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:

Ms. Ashley Elgin

Charles B. Bates, Esq.

Nathan Goens, Esq.

Ms. Sara Talarigo

Ms. Ann Smith