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26-ORD-322

July 16, 2026

In re: Saeid Shafizadeh/Kentucky Transportation Cabinet

Summary: The Kentucky Transportation Cabinet (“the Cabinet”) violated KRS 61.880(1) by failing to initially state whether it possesses existing, responsive records and by assuming the requester submitted the request for a commercial purpose notwithstanding his statement to the contrary. However, the Cabinet did not violate the Act by utilizing a form designed to ensure its compliance with the Drivers’ Privacy Protection Act.

Open Records Decision

On March 26, 2026, Saied Shafizadeh (“the Appellant”) submitted a request by U.S. Mail to the Cabinet seeking to inspect and, upon request, be provided with copies of records identifying the “name and address of the motor vehicle dealer(s) that filed Application for Kentucky Certificate of Title or Registration TC 96-182 on or after June 19, 2023,” for five vehicles that he described by year, make, model, and vehicle identification number (“VIN”). The Appellant stated that he is a “resident” of Kentucky,¹ that the request was not made for a commercial purpose,² and that he desired to inspect the records before receiving “PDF copies” of them.³

By email sent after the close of business on April 13, 2026, the Appellant notified the Cabinet that he originally submitted the request by letter on March 26, 2026, but had yet to receive a response. The Appellant attached a copy of the March

¹ See KRS 61.870(10).

² See KRS 61.870(4).

³ Pursuant to KRS 61.872(3), a resident of the Commonwealth, as defined in KRS 61.870(10), may inspect public records “[d]uring the regular office hours of the public agency” under KRS 61.872(3)(a), or by “receiving copies of the public records from the public agency through the mail” under KRS 61.872(3)(b) if the requester “precisely describes” the records and those records are “readily available” within the public agency (presuming the individual’s residence or principal place of business is outside the county where the records are located). The official custodian “shall mail the copies” but only “upon receipt of all fees and the cost of mailing.” *Id.*

26 letter to his email. On April 15, 2026, the Cabinet forwarded the Appellant's email, including the attached request letter, to the Cabinet's Division of Motor Vehicle Licensing, Records Management Section, ("DMV") for processing, and the DMV responded on April 17, 2026, advising the Appellant that he must "complete the attached form TC 96-16A and ensure that all fields are filled out completely; since this request is being made on behalf of a business, please include your FEIN [(Federal Employee Identification Number)] in the space provided." In addition, the DMV stated that payment of \$15.00 must also be included when the Appellant submitted the completed form and, upon receipt of the completed form and payment, the DMV would finish processing the request and send copies of records containing "the requested information" to him. This appeal followed.

Under KRS 61.880(1), a public agency has five business days upon receipt of a request in which to send a written response and either comply or deny the request and explain why. "A public agency violates KRS 61.880(1) 'if it fails to advise the requesting party whether the' records exist." *Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 873 (Ky. App. 2021) (quoting 20-ORD-010); 26-ORD-044. A public agency cannot simply ignore portions of a request. *See, e.g.,* 25-ORD-027; 21-ORD-090. When a public agency denies a request under the Act, its written response 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." KRS 61.880(1). Its response cannot be merely "limited and perfunctory." *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996).

Here, the Appellant's initial request is dated March 26, 2026, but the Cabinet states it did not receive it before receiving the copy attached to his April 13, 2026, email. The Office has consistently found it cannot resolve factual disputes between a requester and a public agency, including disputes regarding whether a public agency received a request or a public agency's response was received. *See, e.g.,* 26-ORD-146 (agency claimed it did not receive the request). On appeal, the Cabinet confirms it has no record of receiving the mailed copy of the Appellant's March 26 request until he resubmitted it by email on April 13. Thus, the Office cannot resolve the factual question of whether the Cabinet received the Appellant's request prior to receipt of his April 13 email.

On appeal, the Appellant first emphasizes that he did not make the request for a commercial purpose, nor did he ask to receive copies of the records without first exercising his right of inspection. *See* KRS 61.872(3)(a)–(b). He also claims that the Cabinet subverted the intent of the Act⁴ by failing to state whether it possesses any of the records he seeks, and also violated the Act by failing to cite which statutory exemption, if any, justifies the agency's "blanket refusal" to make any existing records

⁴ *See* KRS 61.880(4).

available for his inspection and, upon request and payment of the copying fee,⁵ provide him with copies of those records or, in the alternative, properly invoke KRS 61.872(5) by providing a detailed explanation of the cause for the delay in providing access. The Appellant further contends that the Cabinet subverted the intent of the Act by requiring completion of a particular form before providing access to any existing, responsive records.

In response, the Cabinet states it did not “deny” the Appellant’s request “and expected to receive a notarized TC 96-16A by mail for each VIN or a response” from the Appellant with any questions he might have regarding the required form, payment of the associated fee, or the process in general. The Cabinet, for the first time, also explains that commercial requests for this information (or the records containing this information) “carry a different standard for disclosure under Federal law[.]” specifically, the Drivers’ Privacy Protection Act (“DPPA”), “which requires states to obtain individual permission before selling or releasing personal motor vehicle records for marketing or third-party bulk solicitation.” The Cabinet further asserts that it did not violate the Act by failing to produce records within the statutory timeframe, or by failing to invoke the applicable statutory exception(s), if any, or by failing to request additional time in which to provide any existing, responsive, and nonexempt records under KRS 61.872(5), because the Cabinet did not deny the Appellant’s request or ask for additional time in which to fulfill it. However, the Cabinet initially violated the Act by assuming the Appellant submitted the request for a commercial purpose, even though he stated in the March 26, 2026, request that he is a “resident of Kentucky; and this request is not for commercial purposes.”

Under KRS 61.874(4), if public records are requested for a commercial purpose, the public agency is authorized to impose certain requirements, namely, the imposition of a reasonable fee that includes recovery of staff costs, a certified statement of the commercial purpose for which the records will be used, and the establishment of a contract. Accordingly, KRS 61.876(4)(c) permits the agency to inquire “[w]hether the request is for a commercial purpose.” 26-ORD-007. If the requester fails or refuses to answer that question, the agency is permitted to deny the request. *See, e.g.*, 24-ORD-021.

⁵ In relevant part, KRS 61.874(1) provides, “Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted” from disclosure under any of the statutory exceptions codified at KRS 61.878(1). “*When copies are requested*, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate.” *Id.* (emphasis added). In addition, KRS 61.874(3) provides that the public agency “may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required.”

Here, the Cabinet's initial response assumed the Appellant's request was being made for a commercial purpose despite his preemptive statement denying that characterization. The record on appeal contains no evidence to suggest the Appellant made the request "on behalf of a business," as the Cabinet stated on April 17, 2026. "[N]othing in the Act allows an agency to deny a request, after the requester states the records will not be used for a commercial purpose, simply because the agency disagrees with the requester's answer to the question." 25-ORD-064; 24-ORD-049. To the contrary, "for purposes of fulfilling the request, the requester's statement as to the purpose of his request is conclusive." 26-ORD-007; *see, e.g.*, 20-ORD-116 (finding a public agency may not treat a request as commercial when the requester states it is noncommercial); 19-ORD-180 (finding a public agency may not require "a sworn certification of noncommercial purpose"). The Cabinet did not deny the Appellant's request on that basis, and it was, of course, permitted to require a certified statement of the commercial purpose for the request *if* appropriate, *i.e.*, the requester had not preemptively answered that question. However, the Cabinet was not permitted to calculate its fee using the cost factors identified at KRS 61.874(4)(c) when the request was not made for a commercial purpose within the meaning of KRS 61.870(4). "[N]othing in the Act authorizes a public agency to simply designate a request as one for a commercial purpose." 26-ORD-007.

That said, the Office finds no error in the Cabinet's practice of requiring completion of KYTC Form TC 96-16A, "Request for Motor Vehicle or Boat Record that Includes Personal Information,"⁶ before processing a request implicating records that contain personal information regarding any specific individual obtained by the DMV "in connection with a motor vehicle record, except as provided in the Act."

On appeal, the Cabinet explains that "Federal law requires submission of a completed form compliant with the DPPA prior to the inspection of a record covered by the Act." In supplemental correspondence, the Cabinet explains that "[r]ecords responsive to the [Appellant's] request do reportedly exist, are records of the [DMV], contain personal identifying information collected by the [DMV] in its administration of motor vehicle licensing law, and the DPPA does control their release." Further,

⁶ Form TC 96-16A states that it is used "[i]n compliance with KRS 61.874 and 601 KAR 2:020(6)," the latter of which expressly authorizes the Cabinet to promulgate administrative regulations to implement KRS Chapter 187. The form further states that KRS 187.310(1) requires the Cabinet "to furnish, upon request, an abstract of the operating record of a person subject to KRS 187.290 to 187.620." Significantly, 601 KAR 2:020 also states that 18 U.S.C. § 2721 determines the information "that shall and shall not be included in information sold or otherwise distributed about a motor vehicle operator or owner," and it includes 18 U.S.C. § 2721 among the authorities that justify promulgation of 601 KAR 2:020.

these responsive records,⁷ “perhaps redacted, would presumably be made available”⁸ to the Appellant upon the Cabinet’s receipt of the appropriate fee and completed Form TC 96-16A from the Appellant. However, the Cabinet maintains that KRS 61.878(1)(k) and the DPPA “exclude unredacted title history records from the application of the [Act] unless and until a requester satisfactorily completes the required disclosure of their intent and identity.” In so arguing, the Cabinet implicitly states that “title history records” are the responsive records within its possession, custody, or control.

The general rule is that “[a] public agency shall not require the use of any particular form for the submission of an open records request, but shall accept for any request the standardized form developed under KRS 61.876(4). . . .” KRS 61.872(2)(c); 26-ORD-007; 25-ORD-311. However, the resolution of this appeal turns on the more specific and controlling language of 18 U.S.C. § 2721,⁹ *et seq.*, commonly known as the DPPA, which governs the disclosure of personal information contained in state motor vehicle records. KRS 61.878(1)(k), which exempts from disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law,” incorporates the DPPA into the Act.

In relevant part, 18 U.S.C. § 2721 provides:

(a) **In general.**—A State department of motor vehicles, and any officer, employee, or contractor thereof, *shall not knowingly disclose or otherwise make available to any person or entity;*

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with

⁷ The Appellant emphasizes that he did not request a “motor vehicle record,” as defined in 18 U.S.C. § 2725(1), nor did he request any “personal information,” as defined in 18 U.S.C. § 2725(3) or “highly restricted personal information” as defined in 18 U.S.C. § 2725(4). However, on appeal, the Cabinet clarifies that the only existing, responsive records it possesses are the “title history records,” which include such information.

⁸ KRS 61.878(4) requires a public agency to “separate the excepted and make the nonexcepted material available for examination.” The Cabinet is permitted to redact any confidential information prior to making the responsive records available for the Appellant’s inspection, and it is permitted to require payment of a reasonable copying fee to reproduce the records. But the Cabinet is not permitted to pass on the costs of redaction when reproducing records for a noncommercial purpose. *See Dep’t of Ky. State Police v. Courier Journal*, 601 S.W.3d 501, 508 (Ky. App. 2020) (holding the agency’s inability to redact records in its database other than by manual redaction did not permit it to pass on the reproduction costs to the requester); 23-ORD-178.

⁹ “In harmonizing the conflict between two statutes that relate to the same subject, Kentucky follows the rule of statutory construction that the more specific statute controls over the more general statute.” *Light v. City of Louisville*, 248, S.W.3d 559, 563 (Ky. 2008); 07-ORD-233.

a motor vehicle record, except as provided in subsection (b) of this section; or

- (2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in (b)(1), (b)(4), (b)(6), and (b)(9); *Provided*, that subsection (a)(2) shall not in any way affect the use of organ donation information on an individual's driver's license or affect the administration of organ donation initiatives in the States.

(Emphasis added.)

Fourteen categories of “[p]ermissible uses” of personal information are codified in subsection (b).¹⁰ State departments of motor vehicles and officers, employees, or contractors thereof must disclose personal information to entities, both governmental and private, “in connection with matters of motor vehicle or driver safety and theft, [or] motor vehicle emissions,” and *may* disclose the same information only for the uses enumerated in the statute (none of which are cited in the request or the record on appeal). *See* 05-ORD-131; 01-ORD-25; 98-ORD-1. Under 18 U.S.C. § 2723(a), “[a] person who knowingly violates this chapter shall be fined under this title.” Additionally, if the DMV is found to have “a policy or practice of substantial noncompliance with this chapter,” it “shall be subject to a civil penalty imposed by the Attorney General of not more than \$5,000 a day for each day of substantial noncompliance.” In other words, the DMV, a subdivision of the Cabinet, and “officers, employees, or contractors thereof” must limit production of records that include the information requested in a manner consistent with provisions of the DPPA. To that end, the Cabinet requires a requester with a commercial purpose to complete a Form TC 96-16A prior to being providing with access to existing records containing “Personal information” or “Highly restricted personal information.”

The DPPA, which is incorporated into the Act by KRS 61.878(1)(k), has strict limitations regarding who may obtain records containing personal information as defined at 18 U.S.C. § 2725(3). Failure to comply with DPPA carries severe potential financial penalties. *See* 18 U.S.C. § 2723(a). DPPA, the more specific federal statute,

¹⁰ “Personal information” is defined as information “that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations and driver’s status.” 18 U.S.C. § 2725(3). “Highly restricted personal information” means “an individual’s photograph or image, social security number, medical or disability information.” 18 U.S.C. § 2725(4).

controls over KRS 61.872(2)(c). Therefore, the Cabinet did not violate the Act when it required the Appellant to complete a form before providing responsive records.

Regarding the Cabinet's proposed fees, the Appellant has consistently stated that he is not requesting any "personal information," or "[h]ighly restricted personal information"; instead, he only requests to inspect any existing, responsive records, *i.e.*, records containing the "name and address of the motor vehicle dealer(s) that filed Application for Kentucky Certificate of Title or Registration TC 96-182 on or after June 19, 2023," for specific vehicles. The Cabinet has clarified that it possesses existing records, *i.e.*, title histories, and has belatedly acknowledged on appeal that it must redact any protected material from those records under KRS 61.878(4) rather than deny access to such records entirely. Under KRS 61.874(1) and (3), the Cabinet is entitled to impose a reasonable fee that "shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required." However, "[t]he need to prepare redacted copies does not remove the option of on-site inspection. When a public agency makes copies of public records as a necessary step in the process of redaction, it may not charge a copying fee when the requester merely *inspects* the redacted records." 19-ORD-028. Rather, the agency "must discharge its duty [to redact] under KRS 61.878(4), and must bear the costs attendant to this duty." 19-ORD-028. Accordingly, the Appellant may exercise the right to inspect redacted copies of the records at the Cabinet without being charged for copies. If he chooses to retain the copies, then standard charges will apply. 19-ORD-028.

In summary, because DPPA expressly limits disclosure of information that is contained in the responsive records to specific individuals, the Cabinet did not violate the Act when it required the Appellant to complete Form TC 96-16A. That form confirms the identity of a requester and his or her purpose in requesting access to records containing the protected information and, therefore, ensures the Cabinet's compliance with DPPA. Thus, the Cabinet was authorized to require the Appellant's to complete it prior to permitting him to conduct onsite inspection of those records. *See also* 26-ORD-117 (the agency did not violate the Act when it "only required proof that the Appellant was, in fact, a parent and guardian of the subject child," to ensure compliance with the Family Educational Rights and Privacy Act). However, the Cabinet violated the Act when it assumed the Appellant's request was for a commercial purpose despite his statement to the contrary.

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.

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/s/ Michelle D. Harrison
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