



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-419

September 16, 2026

In re: Kasey Guess/Kentucky State University

Summary: Kentucky State University (“the University”) violated the Open Records Act (“the Act”) when it did not timely respond to the Appellant’s request and when it did not grant or deny the Appellant’s request. The University did not violate the Act when it denied the request under KRS 61.872(6) because it would impose an unreasonable burden on it.

Open Records Decision

On June 24, 2026, Kasey Guess (“the Appellant”) submitted a request to the University seeking “all email or other written communication” sent between two named University employees and “other [University] staff members” between June 10, 2026, and the date of her request. On July 7, 2026, the University granted the request, providing responsive records without redaction. That same day, the Appellant sent a follow-up email alleging that the records provided were not responsive to her request. The University responded by stating that it had interpreted the request as seeking records between the Appellant and the two named University employees. The University also asked the Appellant to advise if its interpretation of the request was incorrect. The Appellant responded that the University had incorrectly interpreted her request and explained again that she sought emails sent between the two named University employees and any other employee of the University. Having received no further response from the University, 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 the University and did not receive a response until the eighth business day after submitting the request. The University has not disputed the Appellant's claim that its response was untimely. Therefore, the Office must conclude that the University violated the Act when it did not respond to a request for records within five business days.

When a public agency denies inspection of public records, it 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). The agency must "provide particular and detailed information," not merely a "limited and perfunctory response." *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). "The agency's explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it." *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013). Here, the University's response stated it was granting the Appellant's request. However, the University only granted the request insofar as it had wrongly interpreted it. The University's response failed to either grant to deny the request as to the records the Appellant actually sought. Accordingly, the University's response violated the Act.

On appeal, the University now states that it is denying the Appellant's request because it would impose an unreasonable burden on it. 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 25-ORD-322, the Office found an agency had shown an unreasonable burden by clear and convincing evidence when its search resulted in 11,482 emails and attachments, which required review for "exemptions under personal privacy and FERPA [the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g], and potentially attorney-client privilege or preliminary drafts, notes, correspondence, or recommendations or memoranda."

Here, the University states that the Appellant's request implicates roughly 13,000 emails. The University further explains that those emails will need to be

reviewed and redacted or withheld pursuant to exemptions most likely to be implicated by the request. Those exemptions include “FERPA for student records and personally identifiable information; information about employees or students that would create an unwarranted invasion of personal privacy [see KRS 61.878(1)(a)]; attorney-client privilege [see KRS 61.878(1)(l)]; and internal communications that contain or function as preliminary notes, memoranda, opinions, and recommendations [see KRS 61.878(1)(i), (j)].” In 23-ORD-251, the Office found that reviewing roughly 6,500 emails for information exempted by FERPA and the attorney-client privilege posed an unreasonable burden on the agency. Here, the University has explained that the Appellant’s request would impose an even greater burden on it. Accordingly, the University did not violate the Act when it invoked KRS 61.872(6) to deny 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.

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Attorney General

/s/ Zachary M. Zimmerer
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Distributed to:

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