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**26-ORD-435**

September 28, 2026

In re: Paul David/Louisville Metro Government

***Summary:*** The Louisville Metro Government ("Metro") violated the Open Records Act ("the Act") when it failed either to provide the requester with all existing, responsive, and nonexempt records within five business days of receiving the request or to properly invoke KRS 61.872(5) by providing a detailed explanation of the cause for the delay in providing some records and the earliest date on which those records would be made available.

## *Open Records Decision*

On July 20, 2026, after the close of business, Paul David ("the Appellant") made a request to Metro for copies of 11 categories of records pertaining to his "application, interview, evaluation, and non-selection for the Corrections Supervisor position."[1]

[1] The Appellant requested: (1) the "original job posting or announcement including any revised or amended versions"; (2) the "official job description, minimum qualifications, preferred qualifications, competencies, experience requirements, and other criteria used to evaluate candidates"; (3) "[r]ecords describing the selection and interview process, including the scoring methodology, rating scales, scoring ranges, weighting of each factor, scoring rubrics, evaluation standards, blank scoring sheets, candidate-comparison forms, panel instructions, guidance, and training materials"; (4) "[a]ll records relating specifically to my application and interview, including each panelist's handwritten or electronic notes, completed scoring sheets, evaluation forms, ratings assigned to my answers, comments, observations, assessments, criticisms, individual scores, subtotal scores, final score, overall rating, ranking, candidate-comparison records containing information about me, recommendations, preliminary documentation, supporting documentation," and records identifying the reasons he was not selected; (5) "[r]ecords reflecting the final selection decision, including the selection recommendation, approval or concurrence records, the date the recommendation was made, the date the final decision was approved, and the names and official titles of the interview panelists, recommending officials, and final decision-makers"; (6) "[e]mails, Microsoft Teams messages, memoranda, agency text messages, or other written communications between Human Resources, interview panelists, hiring officials, command staff, or selecting officials that mention my name or discuss my qualifications, interview, score, ranking, candidacy, selection, non-selection, notification, or whether I would receive an explanation, debriefing, or feedback meeting"; (7) "[c]ommunications discussing when or how I was to be notified, including any effort or alleged effort to contact me before

Metro provided the Appellant with copies of the original job posting responsive to item 1 of the request and the official job description responsive to item 2 of the request on July 28, 2026, via its NextRequest platform. The only message that accompanied the records production stated, "In regard to your request[,] Human Resources has provided the attached records." On August 14, 2026, the Appellant contacted Metro via NextRequest, confirming receipt of the job posting and job description and requesting an update regarding the status of the "remaining requested records and an estimated completion date." Because Metro had not responded to his August 14 inquiry, the Appellant initiated this appeal on August 19, 2026, stating that he had received "no written response addressing the remaining requested records, no statutory basis for withholding them, and no anticipated production date," and also stating he had not received any response to his request for a status update.

Upon receiving notice of this appeal, Metro confirmed its disclosure of records responsive to items 1 and 2 of the Appellant's request on July 28, 2026, and stated that Metro "later supplemented its response by denying responsive records pursuant to KRS 61.878(1)(g)."[2] Metro did not address the alleged deficiencies in its initial response, nor did it offer any explanation for the delay in answering the Appellant's August 14 request for a status update regarding the remainder of the records.

Pursuant to KRS 61.880(1), a public agency "shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays" upon receipt of a request under the Act "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." A public agency may extend the deadline for production of the records, but *only if* the records are "in active use, in storage or not otherwise available" *and* the agency provides "a detailed explanation of the cause . . . for further delay and the place, time, and earliest

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my approved vacation"; (8) "[e]xisting records sufficient to show the dates and methods by which unsuccessful applicants for this position were notified or offered feedback, including whether notification occurred in person, by telephone, virtually, or by email"; (9) "[c]alendar invitations, meeting records, emails, or scheduling communications reflecting feedback or debriefing meetings offered to or conducted with unsuccessful applicants"; (10) "[p]olicies, procedures, general orders, standard operating procedures, Human Resources guidance, collective-bargaining provisions, civil-service rules, or other written instructions governing promotions, interview panel composition, interview scoring, candidate ranking, final selection, notification of applicants, and feedback or debriefing meetings"; and (11) "[r]ecords identifying whether any responsive records have been amended, corrected, supplemented, deleted, destroyed, or scheduled for destruction since the interview or selection decision."

[2] Metro further advises that, in partially denying the Appellant's request, it relied on a line of prior decisions by the Office that have been overruled, and that it has now released "all responsive records" to the Appellant. Metro contends that this appeal is therefore moot under 40 KAR 1:030 § 6. The Office agrees that any substantive issues regarding those records have been rendered moot. However, Metro's disclosure of additional, responsive records following receipt of this appeal does not moot the issue of whether it timely responded. *See, e.g.*, 26-ORD-207; 24-ORD-163; 23-ORD-274.

date on which the public record[s] will be available for inspection." KRS 61.872(5); 26-ORD-232. Metro received the Appellant's request and provided him with copies of two records responsive to items 1 and 2 of the request within five business days. However, Metro's written response did not address the other nine categories of records or invoke KRS 61.872(5); instead, Metro stated merely that Human Resources had "provided the attached records" without further comment or explanation.

KRS 61.880(1) further provides that if a public agency denies a request, in whole or in part, its response must also 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." *Id.* A public agency cannot simply ignore portions of a request as Metro did here. *See, e.g.,* 24-ORD-182; 21-ORD-090. If the records exist but a statutory exception permits the agency to redact or withhold the records, the agency must cite the statutory exception and explain how it applies. KRS 61.880(1), (2)(c). Conversely, if the records do not exist, then the agency must affirmatively state that it does not possess them. *See Bowling v. Lexington–Fayette Urb. Cty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005); 24-ORD-182. Because Metro did not initially do any of these things, its response was timely but otherwise insufficient and violated the Act.

To delay production of records under KRS 61.872(5), a public agency must issue a timely, written response that explains the reason for the delay and specifies the "earliest date" on which the records will be made available. KRS 61.872(5). The statute places the burden on the public agency to give a "detailed explanation of the cause" for delay. *Id.*; 25-ORD-151; 21-ORD-125; *see also* KRS 61.880(2)(c). Here, Metro sent a written response to the Appellant within five business days, but did not cite KRS 61.872(5), provide a "detailed explanation" of the cause for delay, or provide a specific date by which it would provide the records, if any, responsive to the remaining categories of records. Accordingly, Metro's response violated the Act by failing to either provide timely access to all existing, responsive, and nonexempt records or properly invoke KRS 61.872(5).

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/ Michelle D. Harrison
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Assistant Attorney General

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