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26-ORD-451

October 7, 2026

In re: Kiley Milliner/Grayson County Detention Center

Summary: The Grayson County Detention Center ("the Jail") violated the Open Records Act ("the Act") when it delayed production of records without giving the earliest date when the records would be available, and to the extent it failed to provide electronic copies of electronic records that did not require redaction. The Jail subverted the intent of the Act, within the meaning of KRS 61.880(4), when it assessed a fee for inspection of records based on copies it made for purposes of redaction.

Open Records Decision

On July 16, 2026, Kiley Milliner ("the Appellant") submitted a multi-part request to the Jail for "inspection and electronic copies" of various records.[1] More specifically, the Appellant requested "that records maintained electronically be provided in their existing standard electronic format," but that "records exist[ing] only in hard copy" be made available for her "to inspect . . . in person before deciding which pages should be copied." In a timely response, the Jail stated that "most if not all" of the responsive records[2] "are maintained in hard copy." However, the Jail asserted that its records would "need to be pulled and printed for any inspection by" the Appellant, and a payment of 15 cents per page would "be required prior to any documents being provided" for inspection. The Jail further stated the request was "unreasonably broad, consisting of "several thousand[s] of documents," and therefore it would need "significant additional time" to respond to the request unless "the scope is substantially narrowed."[3]

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1 The substance of the Appellant's request is not relevant to the issues on appeal.

2 As to some categories of records, the Jail stated the Appellant must obtain the records from the Grayson County Fiscal Court. The Appellant states she is "not appealing [those] portions of the response."

3 The Jail also claimed the request was "unduly burdensome," but it did not deny the request on that basis.

On July 22, 2026, the Appellant advised the Jail she would be "willing to pay $0.10 per page" for copies, but would require an "itemized estimate identifying [t]he number of responsive pages for each request category; [t]he estimated cost for each category; [w]hich records are maintained electronically and therefore can be provided electronically; and [t]he total amount due." Having received no reply, the Appellant again requested this information on July 27, 2026. On July 31, 2026, the Jail stated the "documents are not available electronically and must be individually researched and pulled." The Jail also provided a total number of records and a total copying fee at the rate of 15 cents per page, which it claimed was "based [on] national averages," and stated the records would be "provided once the requested charge is paid." This appeal followed.

The Appellant claims the Jail violated the Act by failing to include in its response a date when the records would be available for inspection. Under KRS 61.872(5), if public records are "in active use, in storage or not otherwise available," an agency must "immediately notify the applicant [and] designate a place, time, and date for inspection of the public records, not to exceed five (5) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and *earliest date on which the public record will be available for inspection*" (emphasis added). This information must be given within the five business days provided for a response to the request under KRS 61.880(1). *See Cabinet for Health & Fam. Servs. v. Todd Cnty. Standard, Inc.,* 488 S.W.3d 1, 3 (Ky. App. 2016); *see also* 01-ORD-38 (noting "any extension of [the] deadline for disclosure must be accompanied by a detailed explanation of the cause for delay, and a written commitment to release the records on the earliest date certain"). Here, the Jail did not give a date certain, but merely stated it needed "significant additional time." Therefore, the Jail did not properly invoke KRS 61.872(5).

Next, the Appellant argues the Jail failed to specify whether any responsive records exist in electronic format. Under KRS 61.874(2)(a), "[n]onexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, *as designated by the party requesting the records*, where the agency currently maintains the records in electronic format" (emphasis added). Here, the Appellant requested electronic copies of any responsive records maintained electronically.

However, the Jail, in its initial response, stated "most if not all" of the records are maintained in hard copy, which does not answer the question of whether any electronic records exist. On appeal, in an equally ambiguous formulation, the Jail claims "electronic copies . . . do not exist/or are not available for production." Thus, the Jail has not denied that *some* responsive records are maintained in electronic format. It merely claims that "the requested documents must be manually pulled and copied/physically redacted as necessary for production" because the Jail does not

"have a computer system which will automatically redact the records." This reference to "automatic" redaction by "computer" implies that at least some responsive records are maintained in electronic format, but that the Jail must print them out to make redactions on paper. Assuming this to be the meaning of the Jail's response, if any electronic records exist that do not require such redactions, the Jail must provide the Appellant electronic copies of those records.[4]

Moreover, the Jail's response ignored the fact that the Appellant requested to inspect any hard-copy records in person "before deciding which pages should be copied" for her. Under KRS 61.872(3)(a), a "resident of the Commonwealth may inspect . . . public records [d]uring the regular office hours of the public agency." Then, "[u]pon inspection, the applicant shall have the right [to] obtain copies." KRS 61.874(1). An agency may not charge a fee for exercising the right of inspection. *See, e.g.,* 07-ORD-013; 97-ORD-8.

Here, the Jail asserted "most" of the requested records were maintained in hard copy, but demanded the Appellant pay a fee before it would make those records available to her.[5] And the Jail has apparently assessed the same fee for the records it maintains in electronic format. Evidently, the Jail based its fees on the fact that it had to print out or duplicate the records to make redactions. But the separation of "excepted [from] nonexcepted material" is a duty imposed by KRS 61.878(4). Accordingly, "an agency may not impose such a fee for copies made for the sole purpose of redaction." 21-ORD-245; *see Dep't of Ky. State Police v. Courier-Journal,* 601 S.W.3d 501, 508 (Ky. App. 2020) (noting that KRS 61.878(4) "does not specify the costs must be borne by the requester"); *see also* 08-ORD-216 (finding that if the agency's method of redaction necessitates the creation of two copies, the first copy cannot be treated as a reproduction for which a fee may be assessed, but "must instead be treated as a cost of redaction which the [agency] must bear"). Thus, the Jail improperly assessed a fee for the Appellant to inspect copies it made for the sole purpose of redaction.

Under KRS 61.880(4), a person may petition the Attorney General to review an agency's action if the "person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees." Here, because the copying fee was improper and thus excessive, the

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[4] As for electronic records that must be printed out for redaction, *see* 21-ORD-245 (finding an agency was not required to reconvert records into an electronic format after having to print them in hard copy for redaction purposes); *but see* 26-ORD-258 (finding an agency was required to re-scan redacted hard copies of electronic copies into PDF format when the requester had previously agreed to accept "PDF scans of the redacted records" and the agency had *already* converted the electronic records into PDF format to print them out for redaction). *See generally* KRS 61.874(2)(a) ("Agencies are not required to convert hard copy format records to electronic formats.").

[5] On appeal, the Jail refers to allegedly outstanding copying fees from a prior request by the Appellant. That issue is not within the scope of this appeal.

Jail subverted the intent of the Act, within the meaning of KRS 61.880(4), when it imposed such a fee prior to the Appellant's inspection.

However, when the Jail eventually provides copies of records to the Appellant, it should also note that under KRS 61.874(3) any fees must be "reasonable" and "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." In *Friend v. Rees,* 696 S.W.2d 325, 326 (Ky. App. 1985), the Kentucky Court of Appeals held that ten cents per page was a reasonable fee for physical copies under the Act. This Office has consistently found that any copying charge above 10 cents per page is excessive unless the agency can substantiate that its actual cost is greater than that amount, or that the agency has specific statutory authority to charge a higher copying fee. *See, e.g.,* 22-ORD-150 (rejecting an agency's argument "that 10 cents per page is an outdated rate" due to inflation); *see also* 21-ORD-243; 19-ORD-095; 19-ORD-062; 09-ORD-021; 08-ORD-021; 01-ORD-136; 94-ORD-77. Thus, the burden is on the agency charging a higher fee to "substantiate its actual costs in reproducing the records." 22-ORD-150.

In sum, the Jail violated the Act when it delayed production of records without giving the earliest date when the records would be available, as required by KRS 61.872(5), and violated KRS 61.874(2)(a) to the extent it failed to provide electronic copies of electronic records that did not require redaction. The Jail subverted the intent of the Act, within the meaning of KRS 61.880(4), when it assessed a fee for inspection of records based on copies it made for purposes of redaction.

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/ James M. Herrick
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Distributed to:

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