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26-ORD-462

October 14, 2026

In re: Jamie Dizney/Kentucky Horse Racing and Gaming Corporation

Summary: The Kentucky Horse Racing and Gaming Corporation ("the Corporation") violated the Open Records Act ("the Act") when it failed to give a detailed explanation of the cause for delay, as required by KRS 61.872(5). However, on appeal, the Corporation has justified the length of its delay.

Open Records Decision

Jamie Dizney ("the Appellant") submitted a request to the Corporation for five categories of "public records concerning charitable organizations that sought to relocate or establish a home office and/or sought approval to conduct electronic pull-tab activity from a home office during the period September 1, 2025, through September 1, 2026."[1] The Corporation informed the Appellant that, pursuant to KRS 61.872(5), it needed additional time to respond.[2] It stated that it identified a number of potentially responsive documents, which would need to be reviewed for exemptions under KRS 61.878, and that it anticipated providing responsive records on or before October 15, 2026. This appeal followed.

Under KRS 61.880(1), a public agency has five business days to fulfill or deny a request for public records. That period may be extended if the records are "in active use, in storage or not otherwise available," but the agency must give "a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection." KRS 61.872(5). Under KRS 61.880(4), a person may petition the Attorney General if the person feels the

[1] The Appellant's request is dated September 2, 2026.

[2] The Corporation received the Appellant's request on September 4 and responded on September 14, 2026. September 7, the first Monday in September, was the Labor Day state holiday. KRS 2.110(1); KRS 18A.190(1)(f). The Appellant does not dispute the timeliness of the Corporation's response.

intent of the Act is being subverted by an agency short of denial of inspection, including delay past the five-day period in KRS 61.880(1) or excessive extensions of time.

Under KRS 61.880(2)(c), the burden of proof in sustaining the action rests with the agency. Here, the Corporation's response invoked KRS 61.872(5) and stated that the potentially responsive records would have to be reviewed for exemptions under KRS 61.878.[3] It did not identify or estimate the number of records implicated, describe where those records are maintained, or explain why review of this request required a delay of more than five business days. A response that restates the ordinary steps of gathering, reviewing, and redacting records is not a detailed explanation, because the Act contemplates that those steps will ordinarily be completed within five business days, unless KRS 61.872(5) applies. 25-ORD-246; 25-ORD076. A detailed explanation may not consist of boilerplate language unconnected to the request. 11-ORD-135. The Corporation therefore violated KRS 61.872(5).

On appeal, the Corporation has supplemented its explanation for its delay. It explains that the request requires it first to identify the charitable organizations that sought a home-office change or approval to conduct electronic pull-tab gaming from a home office, and that its charitable gaming system has no tool to search or list those organizations, so the search must be done manually. Further, keyword searches of 16 employee email accounts, run with the assistance of the Commonwealth Office of Technology, returned more than 1,600 emails, many of them false positives on the term "home office," and that it expects 150 to 200 of those emails, many with attachments, to be responsive but requiring exempt material to be redacted. It states that a significant portion will require redaction of personal information, confidentially disclosed business records, and privileged communications.

When determining whether a delay is reasonable under KRS 61.872(5), the Office has considered the number of records the requester has sought, the location of the records, and the content of the records. *See, e.g.*, 22-ORD-176; 01-ORD-140; OAG 92-117. A search that required manual review; a return of more than 1,600 emails requiring a responsiveness and exemption review; and redaction of personal, confidential, and privileged material are sufficient to show that the Corporation's four-week delay was reasonable.

[3] The Corporation also relies on KRS 230.225, which created the Corporation and subjects it to the requirements of the Act. However, KRS 230.225 does not itself exempt any of the Corporation's records from the Act.

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.

Russell Coleman
Attorney General

/s/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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