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26-ORD-498

November 2, 2026

In re: Jennifer Mortenson/Mount Vernon Police Department

Summary: The Mount Vernon Police Department ("the Department") violated the Open Records Act ("the Act") when it failed to issue a written disposition of a request it received within five business days, as required by KRS 61.880(1), or an explanation for the delay and the earliest date when the records would be available, as required by KRS 61.872(5).

Open Records Decision

On June 26, 2026, Jennifer Mortenson ("the Appellant") submitted a request to the Department for records related to the "investigation of the February 2023 death of [an] infant . . . including related law-enforcement records concerning his parents." On July 7, 2026, the Department responded, "I have received your request and I will work on filling it asap [*sic*]." On July 28, 2026, the Appellant inquired as to the status of her request. On August 20, 2026, having received no further response from the Department, the Appellant initiated this appeal.[1]

Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it and "notify in writing the person making the request, within the five (5) day period, of its decision." This time may be extended under KRS 61.872(5) when records are "in active use, in storage or not otherwise available," if the agency "immediately notif[ies] the applicant" and gives "a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record will be available for inspection." Thus, when an agency receives a request to inspect records, the Act requires it to "determine" within five

[1] Between July 7, 2026, and initiating the appeal on August 20, 2026, the Appellant made several unanswered inquiries as to the status of her request.

business days whether to grant or deny the request. If the agency determines that any responsive records are "in active use, in storage, or not otherwise available," it may delay access to them. KRS 61.872(5). However, a public agency that invokes KRS 61.872(5) to delay access to responsive records must, within five business days of receipt of the request, notify the requester of the "earliest date" on which the records will be available and provide a detailed explanation for the cause of the delay. *Id*.

Here, the Department's July 7 response neither granted nor denied the Appellant's request and did not invoke KRS 61.872(5). A statement that an agency will "work on filling" a request as soon as possible is not a written disposition under KRS 61.880(1), and it is not a detailed explanation with the earliest date of availability under KRS 61.872(5). *See, e.g.,* 25-ORD-066. Therefore, the Department violated the Act.[2]

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

[2] On appeal, the Department states that it "has since provided the request information" to the Appellant.

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Distributed to:

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