



COMMONWEALTH OF KENTUCKY
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20-ORD-024

February 18, 2020

In re: Mary Jasper/Office of the Pulaski County Judge/Executive

Summary: Office of the Pulaski County Judge/Executive (“OCJE”) failed to make timely disposition of requests for a record, but OCJE was not required to provide a record that did not exist.

Open Records Decision

The question presented in this appeal is whether the Office violated the Kentucky Open Records Act (“the Act”) in its disposition of multi-part requests for records dated December 9 and 17, 2019, and January 6, 2020, from Mary Jasper (“Appellant.”) For the reasons that follow, this Office finds that OCJE violated the Act by failing to make a timely disposition of Appellant’s first two requests.

Since the filing of this appeal, OCJE has fulfilled Appellant’s request dated January 6, 2020, as well as the majority of the requests dated December 9 and 17, 2019. Furthermore, at the time of her December 17, 2020, request, Appellant withdrew some portions of her December 9, 2019, request. This appeal is moot as to those records. 40 KAR 1:030 § 6.

The only contested issue remaining is Appellant’s request for “a list of which employees are currently taking county leased or owned vehicles home with them.” Appellant requested this list on both December 9 and December 17, 2019.

OCJE did not issue a written response to any of Appellant's requests until January 8, 2020, when it responded specifically to the request dated January 6, 2020. That response addressed the two prior requests only in the following terms:

We anticipate that responding to your remaining requests will require extensive time to locate, compile, and redact such public records; accordingly, we require additional time to do so. Requests for records that do not exist or are not available for production will be denied. The information that is obtainable will require at least until February 1, 2020 to be made available.

KRS 61.880(1) requires a public agency to issue a written response to an open records request within three business days. OCJE violated the Act by failing to respond to Appellant's first two requests within that time.

Furthermore, the written response must make a final disposition of the request unless the record "is in active use, in storage, or not otherwise available," and the agency gives "a detailed explanation of the cause ... for further delay." KRS 61.872(5). OCJE did not allege that any of the circumstances listed in KRS 61.872(5) applied or give a detailed explanation of the cause "for further delay and the place, time, and earliest date on which the public record [would] be available for inspection." KRS 61.872(5).

On appeal, OCJE merely asserts that there was "a breakdown of communication among staff due to the holiday season and scheduled employee vacation time." It is the duty of a public agency "to make proper provision for uninterrupted processing of open records requests" in the absence of its records custodian. 98-ORD-161. OCJE violated KRS 61.880(1) by failing to make a final disposition of the request within three business days.

On January 27, 2020, in response to this appeal, OCJE advised that the requested "list does not currently exist and such records are not compiled in the manner requested." A public agency cannot afford a requester access to a record that it does not have or that does not exist. 99-ORD-98. Nor is an agency required to compile a list of information to satisfy an open records request. 95-ORD-131. Accordingly, OCJE did not violate the Act by failing to provide a list that did not

exist. Nevertheless, OCJE violated the Act by failing to make a timely disposition of the requests dated December 9 and 17, 2019.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. 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.

Daniel Cameron
Attorney General

/s/ James M. Herrick

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Assistant Attorney General

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Distributed to:

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