



Commonwealth of Kentucky
Office of the Attorney General

Attorney General
Daniel Cameron

Capitol Building, Suite 118
700 Capital Avenue
Frankfort, Kentucky 40601
(502) 696-5300
Fax: (502) 564-2894

20-ORD-042

March 12, 2020

In re: Michael Murphy/Gallatin County Fiscal Court

Summary: Gallatin County Fiscal Court (“Fiscal Court”) violated KRS 61.872(3)(a) by failing to honor a request to inspect public records on public premises. The Fiscal Court’s request for additional time violated KRS 61.872(5) by failing to state the earliest date on which records would be available, however, it ultimately produced records timely.

Open Records Decision

On January 29, 2020, Michael Murphy (“Appellant”) mailed six requests to inspect public records to the Fiscal Court. Two requests were broadly framed, seeking, “[a]ll zoning permits and or relevant documents” and “[c]ontract and all Bids Documents relating to” Fiscal Court issues. Appellant stated, “[i]f permission is granted to inspect the above records, I may also...request copies of part or all of the requested documents.”

On February 3, 2020, the Fiscal Court received the request and responded by requesting additional time, stating, “[p]lease allow us a reasonable amount of time to comply with your request. I will email you when we have it completed.” However, on February 5, 2020, and within the required three-day period, the Fiscal Court emailed responsive records. Appellant initiated this appeal, stating, “[t]he

[Fiscal Court] failed to invoke any statutes allowing more time beyond the requirements,” and “I was never given the right of inspection.”

The Fiscal Court violated KRS 61.872(3)(a) by failing to honor Appellant’s request to inspect public records on the public premises. KRS 61.872(3) provides that “[a] person may inspect the public records: (a) During the regular office hours of the public agency; or (b) By receiving copies of the public records from the public agency through the mail” Moreover, KRS 61.872(1) provides that, “[a]ll public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right.” Here, the Fiscal Court simply emailed records to Appellant and failed to acknowledge whether he could inspect the public records during the Fiscal Court’s regular office hours. Appellant sought to inspect the records in person, as is his right under the Act. By failing to honor that request, the Fiscal Court violated the Act.

The Fiscal Court’s initial response was also deficient. Although the Fiscal Court timely provided records to the Appellant, a request for additional records must comply with KRS 61.872(5). If a public agency requires additional time to produce records because they are “in active use, in storage, or not otherwise available,” then KRS 61.872(5) establishes the appropriate way to respond.

[T]he official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) 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.

KRS 61.872(5). The statute clearly states that the agency must notify the applicant of the “earliest date on which the public record will be available.” Here, the Fiscal Court requested additional time to respond, but failed to provide Appellant the date upon which the records would be available. *See* 19-ORD-044 (explaining that a statement that “I will get copies out as soon as I can” does not meet the earliest date certain requirement of KRS 61.872(5)). Although the Fiscal Court did not require additional time and supplied copies of the requested records within three business days after receiving the request, as required by KRS 61.880, its initial response did not comply with KRS 61.872(5).

A party aggrieved by this decision shall 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 proceeding.

Daniel Cameron
Attorney General

/s/ John Marcus Jones

J. Marcus Jones
Assistant Attorney General

#054

Distributed to:

Michael Murphy
Jennifer Brown
John G. Wright, Esq.