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**20-ORD-076**

May 20, 2020

In re: Gerald West/Newport Police Department

**Summary:** Newport Police Department (“NPD”) violated the Open Records Act (“Act”) by failing to respond timely to a request for records.

***Open Records Decision***

On February 26, 2020, Gerald West (“Appellant”) requested from NPD a copy of two recorded interviews. Having received no response, he resubmitted the request on April 1, 2020. On April 21, 2020, Appellant initiated this appeal because, he says, he never received a response to either request.

On appeal, NPD states it was unaware Appellant had filed a request in February. NPD claims it only learned of the original request upon reviewing Appellant’s subsequent request. NPD states that there was a delay in locating the responsive records due to staffing issues created by the coronavirus emergency, but NPD eventually issued a written response on April 17, 2020. NPD attached a copy of the written response to the appeal, which stated that the two responsive audio recordings do not exist. Appellant has not challenged that disposition.

NPD violated the Act by failing to issue a timely written response to the requests. Under KRS 61.880(1), a public agency “shall determine within three (3) [business] days . . . whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period of its decision.” In response to the coronavirus pandemic, the General Assembly passed Senate Bill

("SB") 150, which took effect on March 30, 2020, pursuant to an emergency clause. SB 150 enlarged the time for an agency to respond to an open records request to ten days from receipt of the request.<sup>1</sup> NPD did not state when it received Appellant's subsequent request, but NPD issued its April 17, 2020, response seventeen days after Appellant's subsequent request.

Under KRS 61.880(2)(c), the public agency carries the burden of proof in sustaining its action. Because NPD did not state when it received Appellant's subsequent request, it has not met its burden that it responded to the request within ten days, as required by SB 150. Accordingly, NPD's response was untimely and thus violated the Act.

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

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Distributed to:

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<sup>1</sup> Section 1(8)(b) of SB 150 provides, in relevant part: "[n]otwithstanding KRS 61.872 and 61.880, a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt."

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