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OFFICE OF THE ATTORNEY GENERAL

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20-ORD-100

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In re: Leonard Slaughter/Lexington Fayette Urban County Government

Summary: Lexington Fayette Urban County Government ("LFUCG") did not violate the Open Records Act ("the Act") when it timely produced the requested records for inspection even though it initially claimed that a request imposed an unreasonable burden. LFUCG did not subvert the intent of the Act in producing email "chains." This Office is unable to resolve disputes regarding perceived disparity in records produced in response to a request.

Open Records Decision

On May 26, 2020, Leonard Slaughter ("Appellant") submitted a request to inspect all emails sent or received by an LFUCG employee during a two-month period. In a timely response, LFUCG first stated Appellant's request was unreasonably burdensome due to the large number of emails implicated by the request. LFUCG invited Appellant to resubmit and narrow his request to include specific keywords appearing in the requested emails. Appellant complied and resubmitted his request to include several keywords, but LFUCG claims it never received the resubmitted request. Although LFUCG claimed Appellant's original request was unduly burdensome in scope, the agency nonetheless searched for responsive emails and notified Appellant in writing on June 8, 2020 that the records were available for inspection at the agency's office.[1]

[1] The agency redacted or withheld some emails under KRS 61.878(1)(a) (personal privacy exemption) and KRS 61.878(1)(i) (correspondence with private individuals other than notice of final agency action). Appellant has not appealed LFUCG's reliance on these exemptions, nor has he objected to any

Appellant inspected the records in-person on June 12, 2020. Appellant admits that the records were provided in two "stacks" and that he only inspected one "stack." Appellant claims that LFUCG intentionally provided duplicate records by including full email "chains" in an attempt to obfuscate information contained within the records and dissuade his inspection. Although he admits he did not inspect all of the records produced, Appellant also believes LFUCG failed to provide additional responsive emails. Appellant initiated this appeal and argues that his original request was not unreasonably burdensome, that LFUCG subverted the Act in providing duplicative emails, and LFUCG did not produce for inspection all responsive records in its possession.

Regarding his first claim, LFUCG originally stated that Appellant's request was unreasonably burdensome. To sustain that assertion, LFUCG was required to provide clear and convincing evidence that the request was unreasonably burdensome. KRS 61.872(6). LFUCG's original response merely asserted that Appellant had submitted a "blanket request" that requires "review and redaction of a large number of records[.]" This response failed to provide clear and convincing evidence that Appellant's request was unreasonably burdensome. Nevertheless, LFUCG processed Appellant's request as originally submitted and produced responsive records for inspection within ten business days of receipt, as required under Senate Bill 150 during the current state of emergency. Although LFUCG's original response was deficient, in that it did not provide clear and convincing evidence to support its claim that the request was unreasonably burdensome, it timely corrected its error prior to this appeal. Accordingly, this Office finds that LFUCG did not violate the Act.

Appellant's second claim is that LFUCG subverted the Act, under KRS 61.880(4), by providing duplicative emails in an attempt to misdirect or impede his inspection. KRS 61.880(4) provides:

> If a person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

In response, LFUCG argues that it did not produce duplicative emails. Instead, LFUCG produced each independent email, which necessarily contained the text of all previous emails within that chain. Production in this manner does not constitute subversion of the Act within the meaning of KRS 61.880(4).

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specific redactions. As a result, this Office expresses no opinion on whether LFUCG properly relied upon these exceptions.

Appellant's final claim is that LFUCG failed to provide all responsive records in its possession. However, this Office has routinely declined to adjudicate an appellant's assertion that additional records should exist where, as here, the agency has searched for and provided all responsive records and claims there are no additional records. *See, e.g.*, 19-ORD-234; 19-ORD-083; 03-ORD-61; OAG 89-81. Moreover, Appellant admitted that LFUCG provided two "stacks" of records for inspection, but that he concluded his inspection after reviewing only some of the records produced. Accordingly, this Office is unable to find that LFUCG violated the Act by failing to produce all responsive records.

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
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/s/ Marc Manley
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Distributed to:

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