



COMMONWEALTH OF KENTUCKY
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20-ORD-137

August 31, 2020

In re: Bill Price/City of Glencoe

Summary: The City of Glencoe (“City”) subverted the intent of the Open Records Act (“the Act”) by failing to provide access to records within ten days and failing to explain the cause for delay.

Open Records Decision

On July 1, 2020, Bill Price (“Appellant”), requested from the City copies of all public records “associated with or leading up to” the City’s annexation of certain property in August 2006. Specifically, Appellant sought copies of all City Council meeting minutes, or transcripts of any hearings, where the annexation was discussed. Appellant also sought “a list” of any improvements the City has made to the property. Then, on July 15, 2020, Appellant submitted a different request for a copy of an ordinance that prohibits the discharge of a firearm within city limits, as well as copies of any City Council meeting minutes where the ordinance was discussed. Finally, Appellant sought copies of any records charging any person or business with a violation of the ordinance. In a consolidated response issued July 21, 2020, the City advised Appellant that “[d]ue to the volume of materials that need to be searched, dating back to at least 1960 and the present condition of the files” the City would not be able to obtain responsive documents until September 1, 2020.

Appellant initiated this appeal challenging the City’s delay in providing responsive records. Appellant claims that the requested ordinance should be readily available. Moreover, the annexation occurred in 2006 and the City failed to

explain how records from 1960 would be relevant to an annexation that occurred almost fifty years later. Appellant claims that the City intentionally delayed access to these records because he needed them for an upcoming City Council meeting. As such, Appellant claims the City subverted the Act. Upon receipt of the appeal, this Office notified the City and invited it to respond. The City failed to respond to the appeal.

Under KRS 61.880(4), “if a person who feels the intent of [the Act] is being subverted by an agency short of denial of inspection,” that person may challenge the agency’s response as if it were a denial. One of the Act’s purposes is to provide prompt access to inspect public records. This is why, ordinarily, a public agency must respond within three business days whether it will comply with a request for inspection. KRS 61.880(1).¹ However, if records are “in active use, in storage or not otherwise available,” the public agency must inform the requester and provide “a detailed explanation of the cause” for further delay and the earliest date upon which the records will be available for inspection. KRS 61.872(5).

The City’s response failed to indicate whether the records were “in active use, in storage or not otherwise available[.]” The City gave passing reference to “the present condition of the files” without stating what that “present condition” meant. The City failed to explain why the requested ordinance could not be made available until more than a month after the request. Moreover, it failed to explain why it needed to review records dating back to 1960 to comply with a request for records of an annexation that occurred in 2006. Appellant claims the City intentionally delayed access because he needed the records for an upcoming City Council meeting. Because the City failed to respond to this appeal, there is nothing in the record to rebut Appellant’s assertion that the City has intentionally delayed access to these records. Accordingly, the City subverted the intent of the Act by failing to timely produce records and by failing to provide a detailed explanation of the cause for delay.

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

¹ In response to the current coronavirus pandemic, the General Assembly has extended the time for public agencies to respond to ten days. See 2020 Ky. Acts ch. 73 (“SB 150”).

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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/Marc Manley
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Assistant Attorney General

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Distributed to:

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