



COMMONWEALTH OF KENTUCKY
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21-ORD-186

October 4, 2021

In re: Garth Avery/City of Tompkinsville

Summary: Because the City of Tompkinsville (“the City”) failed to respond to an open records request within five business days, it subverted the intent of the Open Records Act (“the Act”) within the meaning of KRS 61.880(4).

Open Records Decision

On August 10, 2021, Garth Avery (“Appellant”), sent a request by facsimile to the City for copies of the personnel files for two City employees. After the City indicated that the transmission was illegible, the Appellant submitted a more legible version of his request by facsimile on August 11, 2021. Having received no response to this request by August 31, 2021, the Appellant initiated this appeal.

Under KRS 61.880(1), a public agency must respond to a request made under the Act within five (5) business days. Furthermore, under KRS 61.880(4), “[i]f a person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . delay past the five (5) day period described in subsection (1) of this section[,] 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.” Because it delayed responding to the Appellant’s request past five business days, the City subverted the intent of the Act within the meaning of KRS 61.880(4).¹

¹ On appeal, the Appellant states that the City orally informed him that it intended to comply with his request by September 3, 2021. However, there is no indication in this record as to whether the City has complied; nor has the City submitted a response to this appeal.

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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Distributed to:

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