



COMMONWEALTH OF KENTUCKY  
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**21-ORD-251**

December 13, 2021

In re: Kelly Bush/City of Franklin

**Summary:** The City of Franklin (the “City”) violated the Open Records Act (“Act”) when it did not issue a response to requests to inspect records within five business days.

***Open Records Decision***

On October 31, 2021, Kelly Bush (“Appellant”) submitted a request to the City for six categories of records related to its construction projects on a specific street and at a specific address. The same day, the Appellant also submitted a second request to the City for “[a] detailed list of all [the City’s] employees and their salaries[.]” On November 10, 2021, having received no response from the City to either request, this appeal followed.<sup>1</sup>

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days ... after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” Here, the City admits it received the request on November 1, 2021, but did not issue its response until November 10, 2021. The City asserts that its response was timely issued pursuant to 2020 SB 150, which previously (and temporarily) allowed an agency ten calendar days to issue its response.

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<sup>1</sup> The Appellant submitted two separate appeals, one for each of her requests to which the City failed to respond. This Office has consolidated both appeals, because the issues and parties are identical.

In response to the public health emergency caused by the coronavirus, the General Assembly enacted 2020 SB 150 during the 2020 Regular Session. 2020 SB 150 became law on March 30, 2020, and provided that, notwithstanding the provisions of the Act, “a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt.” 2020 SB 150 § 1(8)(a). 2020 SB 150 expired on June 29, 2021, when during the 2021 Regular Session, the General Assembly declared that the state of emergency would expire on June 29, 2021. *See* 2021 House Joint Resolution 77. Also during the 2021 Regular Session, the General Assembly passed HB 312, which went into effect on June 29, 2021. 2021 HB 312 amended KRS 61.880(1) to require a public agency to respond to a request to inspect records within five business days. 2021 Ky. Acts ch. 160, § 5. Following the Supreme Court’s decision in *Cameron v. Beshear*, 628 S.W.3d 61, 75 (Ky. 2021), in which the Court held that “the General Assembly establishes the public policy of the Commonwealth,” the Governor called a special session of the General Assembly to respond to the coronavirus pandemic.

During the 2021 Special Session, the General Assembly enacted House Joint Resolution 1 (“2021 HJR 1”), which, among other things, revived 2020 SB 150 until January 15, 2022 “to the extent the provisions are not superseded by statute or administrative regulation.” 2021 HJR 1 § 2(1)(c). As noted above, the ten-day deadline provided by 2020 SB 150 was superseded by the passage of 2021 HB 312. Thus, the General Assembly amended KRS 61.880(1) to allow a public agency only five business days to respond to a request to inspect records. 2021 HB 312, which was enacted after 2020 SB 150, establishes the General Assembly’s policy regarding a public agency’s duty to respond to a request to inspect records—a public agency must respond to such requests within five business days. Accordingly, the City violated the Act when it did not issue its response within five business days.

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 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint emailed to [OAGAppeals@ky.gov](mailto:OAGAppeals@ky.gov).

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