



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

22-ORD-004

January 5, 2022

In re: James Coyne/University of Kentucky

Summary: The University of Kentucky (the “University”) violated the Open Records Act (“the Act”) when it failed to issue a timely response to a request under the Act. However, it did not violate the Act when it provided all the responsive records that exist within its possession.

Open Records Decision

On November 19, 2021, James Coyne (“Appellant”) submitted a request to the University for “a copy of all progress and final reports and IRB reports and updates and minutes of IRB review meetings associated with the PCORI grant awarded to the University of Kentucky, since March 15, 2021, Surviving Suicide: Convening Lived-Experience & Research to Improve Patient-Centered Outcomes.” The Appellant requested that any responsive records be delivered via email or mailed to his home. On December 3, 2021, having received no response from the University, this appeal followed.

Under KRS 61.880(1), a public agency must respond to a request made under the Act within five business days of receipt of the request. Here, the University did not respond within five business days. Thus, it violated the Act.

On appeal, the University provides the Appellant five pages of responsive records and states affirmatively that “[t]hese are the only other

documents the University has in addition to what has already been provided.”¹ Once a public agency states affirmatively that a record does not exist within its possession, the burden shifts to the requester to present a *prima facie* case that the requested record does exist. *Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not attempted to make a *prima facie* case that additional records should exist. Thus, the University did not violate the Act when it provided all the responsive records within its possession.

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.

Daniel Cameron
Attorney General

/s/Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

James Coyne
William E. Thro

¹ See 21-ORD-071 (the Appellant had previously requested similar records from the University).