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**22-ORD-008**

January 7, 2022

In re: Nancy Gillians/Transportation Cabinet

**Summary:** The Transportation Cabinet (“the Cabinet”) violated the Open Records Act (“the Act”) when it failed to provide records within five business days and did not properly invoke KRS 61.872(5). The Cabinet subverted the intent of the Act within the meaning of KRS 61.880(4) through delay and excessive extensions of time.

***Open Records Decision***

On August 18, 2021, Nancy Gillians (“Appellant”) made a request to the Cabinet for all communications mentioning the phrase “Outer Loop” between January 1, 2020, and August 18, 2021, to or from 22 named individuals or companies, including e-mails and attachments, text messages, memoranda, and letters. After receiving no response, the Appellant resubmitted her request on September 9, 2021. Having still received no response by September 17, 2021, the Appellant sent a follow-up e-mail. That same day, the Cabinet replied that its Information Technology department had “said this was their largest request to date” and it contained “thousands of emails” it would “have to review.” The Cabinet stated that it was “working diligently to produce” the records and would obtain an expected production date from the IT department. The Appellant requested updates from the Cabinet on September 27 and October 1, 2021, but received no response. This appeal followed.

On appeal, the Cabinet states that on December 10, 2021, it provided the Appellant with all responsive records, consisting of “in excess of 1000 emails with attachments.” A public agency has five business days to fulfill a request for public records or deny such a request and explain why. KRS 61.880(1). This time may be extended if the records are “in active use, in

storage or not otherwise available,” but the agency must give “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection.” KRS 61.872(5). Here, the Cabinet did not respond to the request within five business days. Nor did the Cabinet identify a reason for further delay under KRS 61.872(5), give a detailed explanation of the cause for such delay, or state the earliest date when the records would be available. Therefore, the Cabinet violated the Act.

Furthermore, under KRS 61.880(4), a person may petition the Attorney General to review an agency’s action if the “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 [KRS 61.880(1) or] excessive extensions of time.” Here, the Cabinet did not respond to the Appellant’s repeated requests for nearly a month and provided no records for over 16 weeks. The Cabinet has offered no justification for its delay, other than vague statements about the size of the request. Thus, the Cabinet subverted the intent of the Act within the meaning of KRS 61.880(4).

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 e-mailed to [OAGAppeals@ky.gov](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

/s/ James M. Herrick

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Assistant Attorney General

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