



COMMONWEALTH OF KENTUCKY
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22-ORD-011

January 7, 2022

In re: Ashley Gruner/Louisville Metro Police Department

Summary: The Louisville Metro Police Department (the “Department”) violated the Open Records Act (“the Act”) when it failed to issue a timely response and when it did not provide responsive records within five business days or properly invoke KRS 61.872(5). The Department’s initial justification for denying the request has been rendered moot.

Open Records Decision

On November 9, 2021, Ashley Gruner (“Appellant”) submitted a request to the Department for a copy of the case file related to a specific missing person who was last seen in 1983. On December 9, 2021, the Department denied the request under KRS 61.878(1)(h) and KRS 17.150(2) because “this case still remains open and active.” This appeal followed.

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). Here, the Appellant attached proof that the Department received her request on Tuesday, November 9, 2021. However, the Department did not respond to her request until Thursday, December 9, 2021. Because the Department did not respond to the Appellant’s request within five business days, it violated the Act.

In its untimely response, the Department denied the request under KRS 61.878(1)(h) and KRS 17.150(2). However, on appeal, the Department now claims that it erred when it claimed the case was still open. The Department has agreed to provide responsive records to the Appellant after it retrieves the

files from storage and can review them for possible exemptions. Therefore, the Department's original justification for denying the request has been rendered moot. *See* 40 KAR 1:030 § 6.

The Department claims that the case file is in storage and is contained in approximately six boxes. The Department claims it is unable to provide the earliest date certain on which it can complete its review, but it anticipates providing responsive and nonexempt records by "early February."

A public agency can delay its production of responsive public records beyond the five-business day period if the records are "in active use, in storage or not otherwise available," but it must "immediately notify the applicant" and give "a detailed explanation of the cause . . . for further delay . . . and earliest date on which the public record[s] will be available for inspection." KRS 61.872(5). Here, the Department has explained why the records were not immediately available—the records are currently stored in its archives. However, the Department did not "immediately notify" the Appellant, nor did it give her the earliest date on which the public records would be available other than "[r]ough estimates" of "early February." Accordingly, the Department did not properly invoke KRS 61.872(5) to delay inspection of records and it violated the Act.

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
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/s/Matthew Ray
Matthew Ray
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Distributed to:

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