



COMMONWEALTH OF KENTUCKY
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22-ORD-032

February 23, 2022

In re: WKRC-TV/Hancock County Board of Education

Summary: The Hancock County Board of Education (“the Board”) violated the Open Records Act (“the Act”) when it failed to respond to a request for records in a timely manner and when it denied the request without citing an exception to the Act. The Board failed to meet its burden on appeal to sustain the denial.

Open Records Decision

On November 10, 2021, WKRC-TV (“Appellant”) requested that the Board provide copies of “all venue-specific emergency action plans (EAP)” and “written verification of the existence of a venue-specific EAP that was submitted to the state board or KHSAA (i.e. any and all records of compliance).”¹ Having received no response, the Appellant sent an e-mail reiterating the request on November 30, 2021. On the same day, the Board responded via an e-mail in which the assistant superintendent stated that he was “not comfortable with sharing emergency plans with John Q. Public in fear of possibly putting students/spectators at risk.” The Board cited no exception to the Act in support of its denial. Despite further e-mail exchanges in which the Appellant clarified the request, the Board provided no records. This appeal followed.

¹ Under KRS 160.445(4)(a), “each school that participates in interscholastic athletics [must] develop a venue-specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly.” These plans must be “in writing [and] posted conspicuously at all venues.” KRS 160.445(4)(a)2. Under KRS 160.445(4)(b), “[e]ach school shall submit annual written verification of the existence of a venue-specific emergency action plan to the state board or its agency.”

Under the Act, 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 Board did not respond to the original request within five business days. Furthermore, under KRS 61.880(1), an agency response denying inspection of public records must “include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” Because the Board’s response neither identified an exception to the Act nor explained how it applied to the requested records, the Board violated the Act.

Although this Office provided notice of the appeal to the Board and invited it to respond, the Board did not respond to this appeal. In an open records appeal, “[t]he burden of proof in sustaining the action shall rest with the agency.” KRS 61.880(2)(c). Because the Board’s response to the request was insufficient to sustain its denial and the Board has submitted no response to the present appeal, the Board has failed to meet its burden of proof. Accordingly, this Office finds that the Board violated the Act when it denied the Appellant’s request for the reasons stated in its untimely response.

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.

Daniel Cameron
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/s/ James M. Herrick

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Assistant Attorney General

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Distributed to:

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