



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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24-OMD-232

November 6, 2024

In re: James Miller/Mount Vernon City Council

**Summary:** The Mount Vernon City Council (“the Council”) violated the Open Meetings Act (“the Act”) when it failed to issue a written response to a complaint within three business days. The Council also violated the Act when it failed to send notice of a special meeting to a media organization that had filed a written request to receive such notices under KRS 61.823(4).

***Open Meetings Decision***

In a written complaint dated September 4, 2024, James Miller (“the Appellant”), alleged the Council had violated the Act by failing to notify the *Mt. Vernon Signal* (“the *Signal*”) of a special meeting held on August 12, 2024. The *Signal* is a newspaper that has, according to the Appellant, requested notice of special meetings pursuant to KRS 61.823(4). As a remedy for the alleged violations, the Appellant requested the Council void the action taken at the special meeting. Having received no substantive response to his complaint by October 15, 2022, the Appellant initiated this appeal.

In response to the appeal, the Council does not deny receiving the Appellant’s complaint, nor does it claim to have issued a substantive response to it. However, the Council claims it issued a brief letter in response to the complaint on September 10, 2024. In that letter, the Council asserted it was “still waiting for the response and decision” in an open records appeal filed by the *Signal* concerning the same issue.<sup>1</sup> The letter did not address the merits of the Appellant’s complaint.

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<sup>1</sup> The Office received an appeal from the *Signal* on August 19, 2024. That appeal, however, was returned to the *Signal* as unperfected due to its failure to comply with KRS 61.846(2), which requires the submission of a copy of the written complaint made to the public agency and the public agency’s written denial, if a denial was issued.

Upon receiving a complaint alleging a violation of the Act, a “public agency shall determine within three (3) [business] days . . . after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision.” KRS 61.846(1). The Act does not allow an agency to wait for a decision in a separate matter before responding to a complaint. Therefore, the Council violated the Act when it failed to respond to the merits of the Appellant’s complaint within three business days as required by KRS 61.846(1).

Under KRS 61.823(4)(a), prior to a special meeting, “[a]s soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to . . . each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting.” This notice requirement may be satisfied by email when the media organization states a preference to be notified by email. KRS 61.823(4)(b). Here, the Council does not deny that the *Signal* has requested notice of special meetings within the meaning of KRS 61.823(4)(a). The Council asserts it notified the *Signal* of the special meeting by means of “a phone message left with newspaper staff.”<sup>2</sup> However, KRS 61.823(4)(a) expressly requires “written notice.” A telephone message does not meet this requirement. Therefore, the Council violated the Act when it failed to give written notice to the *Signal* of its special meeting on August 12, 2024.<sup>3</sup>

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.846(4)(a). 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.

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<sup>2</sup> The Council notes the *Signal* has “contested” whether any such message was received. However, because a telephone message is not “written notice,” it is immaterial whether the Council in fact notified the *Signal* in that manner.

<sup>3</sup> In its response to this appeal, the Council asks the Office to determine “whether the resolution passed” at the special meeting “was valid.” Under KRS 61.846(2), however, the Attorney General’s jurisdiction is limited to issuing “a written decision which states whether the agency violated the provisions of” the Act. *See, e.g.*, 07-OMD-196; 98-OMD-74. An action taken by a public agency “without substantial compliance with” the provisions of the Act is only “voidable by a court of competent jurisdiction.” KRS 61.848(5).

**Russell Coleman**  
Attorney General

/s/ James M. Herrick  
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Distributed to:

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