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24-ORD-181

August 21, 2024

In re: Charlie Rowland/University of Kentucky

Summary: The University of Kentucky (“the University”) violated the Open Records Act (“the Act”) when it failed to appropriately respond to a request to inspect records. The University also violated the Act when it did not respond to a request made under the Act.

Open Records Decision

Charlie Rowland (“Appellant”) submitted two requests to the University on June 28 and July 12, 2024. The June 28 request sought five categories of records related to the University’s neurosurgery program.¹ On July 15, after a follow-up email from the Appellant inquiring about the status of his request, the University issued its first response to the June 28 request, stating it was “in receipt of your request” and “will need beyond the five days to respond to your request.” The Appellant’s July 12 request sought one category of records related to the same committee.² Having received no additional response by July 25, 2024, the Appellant initiated this appeal.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of

¹ Specifically, the June 28 request sought “All minutes of the Clinical Competency Committee from July 1, 2022 to present”; “audio and/or video recordings” of graduate medical education interviews for neurosurgery program conducted by a specific University employee in 2024; “[a]ll documents . . . produced or maintained by” the same employee related to graduate medication education interviews for the same program in 2024; and “[a]ll email correspondence sent or received” by two University employees “from April 1, 2024 to present containing the phrase ‘neurosurgery’” or three individual’s names. On July 12, the Appellant withdrew the subpart of his request related to email correspondence from one of the specified University employees.

² The July 12 request sought “[a]ll email correspondence sent or received” by another University employee “from April 1, 2024 to present containing the phrase ‘neurosurgery’” or three individual’s names.

any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” Or, if responsive records are “in active use, in storage or not otherwise available,” a public agency may delay access to them by stating the earliest date on which they will be available and a detailed explanation of the cause of the delay. KRS 61.872(5).

Here, the University does not dispute that it failed to respond to the Appellant’s June 28 request until July 15. Likewise, the University does not dispute that it had not responded to the Appellant’s July 12 request when the appeal was initiated on July 24. Moreover, regarding its July 15 response, the University only stated that that it would “need beyond the five days to respond” to the request. This response neither granted nor denied the Appellant’s request. Further, the University’s July 15 response did not give a detailed explanation for the cause of the delay or state the earliest date on which the records would be made available. KRS 61.872(5). Therefore, the University violated the Act when it did not respond appropriately to the Appellant’s June 28 request and when it did not respond at all to the Appellant’s July 12 request.³

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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.

³ On August 7, 2024, after this appeal was initiated, the University issued final responses to both requests, granting them in part and producing redacted records. On August 14, just seven days before the Office’s statutory deadline to issue its decision in this appeal, the Appellant objected to each portion of the University’s final responses. Under KRS 61.880(2)(a), this Office’s mandate is to review the request for records and the agency’s response to determine whether the agency violated the Act. In finding the University’s initial response to the June 28 request was improper and the failure to respond to the July 12 request violated KRS 61.880(1), the Office has carried out its mandate. The Office declines to consider the new issues raised for the first time on appeal regarding the sufficiency of the University’s final responses. *See, e.g.*, 23-ORD-333 n.1; 22-ORD-200 n.2; 22-ORD-170 n.2; 22-ORD-142 n.3; 21-ORD-177 (stating the Office may decline to consider new issues raised by the parties’ subsequent correspondence on appeal because such matters encroach upon the Office’s statutory deadline to issue a decision within 20 business days and suffer from incomplete briefing by the parties). But the Appellant may initiate a separate appeal asking the Office to review the sufficiency of the University’s final responses by providing the Office with a copy of his original requests and the University’s final responses. *See* KRS 61.880(2)(a).

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/s/ Zachary M. Zimmerer
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Distributed to:

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