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24-ORD-212

September 27 2024

In re: Sarah Thomas/University of Kentucky

Summary: The University of Kentucky (the “University”) violated the Open Records Act (“the Act”) when it failed to grant or deny a request made under the Act within five business days or properly invoke KRS 61.872(5) to delay the production of public records beyond five business days.

Open Records Decision

On August 16, 2024, Sarah Thomas (“Appellant”) submitted a request to the University for records containing three subparts.¹ On August 20, 2024, the University confirmed receipt of the request and stated that it “will need beyond the statutory five business days to respond” and that it “will provide [her] an update on [her] request within five business days.” On August 28, 2024, having received no further response from the University, 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 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.” A public agency may also delay access to responsive records if such records are “in active use,

¹ Subpart one sought “[a]ll email correspondence sent or received by Craig van Horne, MD, from March 25, 2024 to May 17, 2024 containing the phrases ‘Sarah’; ‘Thomas’; ‘CCC’; ‘competency’; ‘review’; ‘letter’; ‘decision’; ‘performance’; ‘professionalism’; ‘communication’; ‘complaint’; and/or ‘appeal.’” Subpart two sought “University of Kentucky Graduate Medical Education Committee (GMEC) meeting minutes from December 1, 2023 to present.” Subpart three sought a “copy of the file ‘2024 Neurosurgery Special Review Action Items 6-2024 Update.xlsx’ including any revised or updated versions of that file.”

storage, or not otherwise available.” KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must also notify the requester of the earliest date on which the records will be available and provide a detailed explanation for the cause of the delay.

Here, the Appellant submitted a request to the University on August 16, and the University confirmed receipt of it on August 20, 2024. The University issued a response within five business days, but that response did not grant or deny the Appellant’s request. Instead, the University stated it “will need beyond the statutory five business days to respond” and that it “will provide [her] an update on [her] request within five business days.” Thus, although the University’s response to the Appellant’s request was timely, it was otherwise deficient. The University’s response did not explicitly invoke KRS 61.872(5), indicate that the records are “in active use, storage, or not otherwise available[,]” notify the Appellant of the earliest date the records would be available, or provide a detailed explanation for the cause of delay. Accordingly, the University violated the Act when it failed to appropriately respond to a request.²

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.

Russell Coleman
Attorney General

/s/ Matthew Ray
Matthew Ray
Assistant Attorney General

² The University states that, on August 29, 2024, it “informed [the Appellant] that it was in the process of gathering, processing, and redacting records that are responsive to her request and that she could expect a response by October 15, 2024.” As proof, the University provides a copy of an email dated August 29 informing the Appellant that “[w]hile [it] cannot say for certain when [it] will be able to respond, [its] hope is that it is before October 15.”

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Distributed to:

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