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24-ORD-217

October 4, 2024

In re: Virgil Jones/Lexington–Fayette Urban County Government Division of
Traffic Engineering

Summary: The Lexington–Fayette Urban County Government Division of Traffic Engineering (the “Division”) violated the Open Records Act (“the Act”) when its response to a request to inspect records failed either to comply with KRS 61.880(1) or to properly invoke KRS 61.872(5).

Open Records Decision

On August 9, 2024, Virgil Jones (“Appellant”) submitted a request for records to the Division for copies of records related to a “traffic light at the intersection of Citation Blvd & Newtown Pike.” On August 30, 2024, the Appellant received an undated letter from the Division, confirming receipt of his request on August 9, 2024, and “requesting additional time due to technical issues.” The Division stated it “will hopefully have the information by” September 16, 2024. On September 3, 2024, the Appellant initiated this appeal claiming that the Division subverted the Act through delay.

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.” If an agency denies in whole or in part the inspection of any record, its response 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.” KRS 61.880(1). Alternatively, if requested records are “in active use, in storage or not otherwise available,” a public agency may delay inspection of the requested records if it provides

the requester a “detailed explanation of the cause” of delay and the “earliest date on which the public record[s] will be available for inspection.” KRS 61.872(5).

Thus, there are only three types of responses a public agency may issue within the five business-day period: approve the request; deny the request by providing citations to exemptions and explaining how the exemptions apply to records that have been identified as responsive; or properly invoke KRS 61.872(5) to delay inspection of the records. The Office has previously found that a public agency violates the Act when its response is timely but does not comply with KRS 61.880(1). *See, e.g.*, 21-ORD-177.

Here, the Appellant submitted his request to the Division on August 9, 2024. The Division responded on August 30, 2024, informing the Appellant that it needed “additional time due to technical issues” and “will hopefully have the information by” September 16, 2024.¹ The Division’s response did not specifically grant the Appellant’s request, deny the request and explain why, or properly invoke KRS 61.872(5) by notifying the Appellant that the requested records were “in active use, in storage or not otherwise available” or providing the earliest date on which such records would be available.² As a result, the Division’s deficient response violated the Act.

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

¹ On appeal, the Division asserts it responded to the Appellant’s request on August 15, 2024. As proof, the Division provides a copy of a different undated response confirming receipt of the Appellant’s request and informing him that, “[d]ue to the voluminous nature of the request and the lengthy time period covered by [his] request, it will take some time to process [his] request” and that “[d]ocuments responsive to [his] request will be available for inspection” on August 30, 2024. The Office has previously found it is unable to resolve factual disputes, such as whether a requester received a public agency’s response to his request. *See, e.g.*, 24-ORD-117. Regardless, the Division’s August 15, 2024, response did not specifically grant the Appellant’s request, deny the request and explain why, or properly invoke KRS 61.872(5).

² On appeal, the Division admits its response did not properly invoke KRS 61.872(5) and asserts that, on September 3, 2024, it “provided the Appellant with all responsive records, with the exception of emails” and that, on September 20, 2024, it “provided the Appellant with all emails responsive to the request.” Although the Office is sympathetic to the Division’s struggle with technical difficulties, it does not change the fact that such difficulties caused a delay in fulfilling the Appellant’s request. Additionally, technical difficulties did not cause the Division to not properly invoke KRS 61.872(5). Moreover, the Division failed to meet both of its self-imposed deadlines to fulfill the Appellant’s request. The Office has previously found that repeated delays violate the Act. *See, e.g.*, 07-ORD-047 (finding an agency’s failure to honor its “self-imposed deadline” and “[i]ts unilateral decision to extend the deadline” subverted the intent of the Act).

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

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Distributed to:

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