



COMMONWEALTH OF KENTUCKY
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24-ORD-265

December 11, 2024

In re: Jody B. Franklin/Morgan County Water District

Summary: The Morgan County Water District (“the District”) violated the Open Records Act (“the Act”) when it failed to appropriately respond to a request under the Act.

Open Records Decision

On September 23, 2024, Jody B. Franklin (“Appellant”) submitted a request to the District seeking electronic copies of the District’s employee handbook and commissioner handbook. On September 24, 2024, the District initially denied the request because the Appellant had not provided a reason for her request but soon abandoned that denial and told the Appellant that a representative would meet her “at the water company for your ‘request.’” According to the Appellant, she received a copy of the employee handbook but did not receive a copy of the commissioner handbook. On October 9, 2024, the Appellant followed up by email asking when she could expect to receive a copy of the commissioner handbook. On November 11, 2024, the Appellant initiated this appeal, claiming she had yet to receive a response from the District.

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.” *Id.* A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090.

Here, the District did not provide the Appellant with a commissioner handbook but has since admitted that it does possess that record. The District’s response neither granted nor denied the Appellant’s request for a copy of the commissioner

handbook within five business days of the request.¹ Therefore, the District violated the Act when it failed to produce a record it possesses without citing any applicable exemption to support withholding the record.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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Jody B. Franklin
Chris Adams, Chairman, Morgan County Water District Board
Myles Holbrook, Morgan County Attorney

¹ On appeal, the District states that the Appellant's September 23 request modified a previous request she had submitted and the District believed she was no longer seeking the commissioner handbook.

² Upon receipt of this appeal, the District provided the Appellant with the commissioner handbook and asks that the appeal be considered moot. *See* 40 KAR 1:030 § 6 ("If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter."). On appeal, the Appellant confirms the record was provided but objects to the appeal being considered moot because the District only provided the record after she appealed to the Office. Thus, the appeal is not moot; the District subverted the Act by causing "delay past the five (5) day period described in" KRS 61.880(1) when it failed to provide the records within five business days. *See, e.g.*, 24-ORD-163; 23-ORD-274; 23-ORD-007.