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24-ORD-273

December 23, 2024

In re: Ronnie Scott Bailey/Rowan County Detention Center

Summary: The Rowan County Detention Center ("the Jail") violated the Open Records Act ("the Act") when it failed to give a detailed explanation of the cause for delay in providing records as required under KRS 61.872(5). The Jail subverted the intent of the Act, within the meaning of KRS 61.880(4), by unreasonable delay when it failed to show the delay was necessary. However, the Jail did not violate the Act when it issued a response through an authorized agent of the official custodian of records.

Open Records Decision

In a request dated November 4, 2024, and received by the Jail on November 12, 2024, Ronnie Scott Bailey ("the Appellant") sought copies of a "directory or list" of official phone numbers for Jail staff, "phone numbers publicly listed or provided to the public for jail operations," "BYOD (Bring Your Own Device) agreements or policies," and "policies regarding use of personal phones for jail business." The Appellant also requested any documents showing "[p]hone number assignments for jail staff," "[m]obile carrier information for all phones used by jail staff in an official capacity," "[e]xpense reports, reimbursement, or payments related to mobile phone services," "[s]tipends or allowances provided for mobile phone usage," and "[t]elecommunications policies or procedures." Finally, the Appellant requested copies of all emails sent to or from the jailer's email address between October 6, 2020, and November 4, 2024, "that are in any way related to jail business, operations, or administration."

In a timely response, the Jail provided a list of telephone numbers and stated, "No one is reimbursed for any cell phones that are employed with the" Jail and "[n]o policy exists regarding cell phone use for employees within the jail." Finally, the Jail stated the requested emails "will have to be retrieved by the County IT person," who "is currently out of town and will be back in a couple weeks." The Jail asserted the emails would "take some time to retrieve" and expressed the "hope" that they would

be available by January 15, 2025. On November 15, 2024, the Appellant asked the Jail to produce emails "in blocks instead of all at once" as it proceeded to review them. Having received no further reply from the Jail by November 22, 2024, the Appellant initiated this appeal.

The Appellant makes two arguments on appeal. First, he claims the Jail has subverted the intent of the Act by excessive delay in producing the requested emails. In response, the Jail asserts its response complied with KRS 61.872(5) by providing "a detailed explanation regarding the delay and a reasonable estimate as to when the emails would be available." The Jail claims a delay of two months is reasonable because the "parameters of [the request] are broad" and the "emails are likely to contain an extensive mixture of exempt and nonexempt information."

Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it. This time may be extended under KRS 61.872(5) when records are "in active use, in storage or not otherwise available" if the agency gives "a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record will be available for inspection." In light of this provision, the Attorney General has recognized that persons requesting large volumes of records should "expect reasonable delays in records production." 12-ORD-228. However, a vague statement about the volume of a request is not a "detailed explanation" under KRS 61.872(5). *See, e.g.,* 22-ORD-164; 17-ORD-194. Further, the redaction process required under KRS 61.878(4) is an ordinary part of fulfilling an open records request. Although extensive redactions may take so much time that the records cannot be produced within five business days, the agency must explain why the stated length of the delay is necessary. *See, e.g.,* 22-ORD-166; 21-ORD-045.

Here, the Jail also claimed the "County IT person" would have to retrieve the emails and would be out of town for "a couple weeks." However, the Jail did not explain why it was necessary for the IT person to retrieve the jailer's emails, when the jailer presumably had access to his own email account. *See, e.g.,* 23-ORD-311 (finding the agency had the burden of explaining "why it was necessary to outsource [a] search" for emails). Thus, the Jail's response failed to provide the "detailed explanation" required by KRS 61.872(5) for the projected delay of two months. Because its response did not comply with KRS 61.872(5), the Jail violated the Act.

Under KRS 61.880(4), a person who "feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . delay past the five (5) day period described in" KRS 61.880(1), may appeal to the Attorney General as if the record had been denied. A public agency subverts the intent of the Act within the meaning of KRS 61.880(4) when it fails to meet its burden of proof under KRS 61.880(2)(c) that a delay in producing records is reasonable. *See,*

e.g., 21-ORD-045. In determining whether a delay is reasonable, the Office considers such factors as the number, location, and content of the requested records. *Id.* "Weighing these factors is a fact-intensive inquiry." *Id.* Here, the Jail has provided no information about the number of records implicated by the request, the nature of the needed redactions, or the time required to review each email. Accordingly, the Jail has not met its burden of proof to justify a delay of two months. *See, e.g.,* 24-ORD-063. Thus, the Jail subverted the intent of the Act, within the meaning of KRS 61.880(4), by delaying access to the requested records.[1]

The Appellant's second claim is that the Jail violated the Act by issuing its response to his request through the Rowan County Attorney instead of directly from the Jail's custodian of records. The Act, however, merely requires a response to be "issued by the official custodian *or under his or her authority."* KRS 61.880(1) (emphasis added). Thus, so long as the Rowan County Attorney had authority from the official custodian to respond to the request, his doing so did not violate the Act. *See* 22-ORD-046.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

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Wes Coldiron, Jailer

[1] "One way that a public agency can demonstrate its good faith" in cases of lengthy delay "would be to release batches of processed records on an ongoing basis." 21-ORD-045 n.3. Here, however, the Jail did not respond to the Appellant's request for it to release records in that fashion.