



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-013

January 14, 2025

In re: Kentucky Public Radio/Louisville Metro Police Department

**Summary:** The Louisville Metro Police Department (“the Department”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), when it delayed access to requested records for six months without proper justification.

### *Open Records Decision*

On December 5, 2024, Kentucky Public Radio (“the Appellant”) submitted a request to the Department for “any and all body camera footage pertaining to” a specific citation issued on September 27, 2024.<sup>1</sup> In response, the Department invoked KRS 61.872(5) by stating the requested record had been located but was “not . . . available” because it was “expected to contain a mixture of exempt and non-exempt information,” the review and redaction process was estimated to take seven minutes for each minute of video, only four individuals were assigned to perform that task, and the Department had “an estimated 1,000+ pending requests for video.” After the Appellant complained that a delay of six months was unreasonable, the Department replied that “[t]he six-month language” was merely “the standard message [it] send[s] on every request for video,” the “average wait” for video requests was “around two months,” and it was “likely” the redaction process for the requested video would begin “within the next month.” This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant or deny the request. KRS 61.880(1). A public agency may delay access to responsive records beyond five business days if such records are “in active use, 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.

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<sup>1</sup> The Appellant also requested a copy of the citation. That portion of the request does not appear to be at issue in this appeal.

A requester who believes the agency's delay is unreasonable may seek the Attorney General's review by alleging the agency subverted the intent of the Act by "delay past the five (5) day period described in [KRS 61.880(1)]." KRS 61.880(4). In determining how much delay is reasonable, the Office has considered the number of records the requester has sought, the location of the records, and the content of the records. *See, e.g.*, 22-ORD-176; 01-ORD-140; OAG 92-117. Weighing these factors is a fact-intensive analysis. *See* 21-ORD-045. Ultimately, the agency bears the burden of proof to sustain its action. KRS 61.880(2)(c).

Here, the Appellant submitted a request to the Department, and in response, the Department invoked KRS 61.872(5) to delay the Appellant's access to the public records for six months. As justification for the delay, the Department stated it was necessary to redact the video, only four technicians were assigned to that task, and a large number of other requests for video were pending. Although the Department estimated it would take seven minutes to process each minute of footage, it did not state how many minutes of video were implicated by the Appellant's request.

While many unrelated, simultaneous requests to inspect records may place a strain on a public agency, "[n]either the volume of unrelated requests nor staffing issues justifies a delayed response." *See* 19-ORD-188 n.1; *see also* 24-ORD-063; 22-ORD-167. Here, in its response to the request, the Department admitted that "[s]ome requests take as little as 30 minutes to an hour to complete, while some can take over a week." Thus, no single request takes the Department six months to process. In 23-ORD-328, the Office found the exact same justifications offered here by the Department did not substantiate a delay of six months to provide the requested video. Here, likewise, the Department has not met its burden under KRS 61.880(2)(c) to justify a six-month delay to respond to the Appellant's request.<sup>2</sup> Accordingly, the Department subverted the intent of the Act, within the meaning of KRS 61.880(4), when it delayed access to records beyond the five-day period under KRS 61.880(1).

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

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<sup>2</sup> On appeal, the Department states the requested record consists of "a video two and one-half hours in length," which it redacted in four hours' time and provided to the Appellant on December 13, 2024, two days after this appeal was initiated. Because it has now provided the record, the Department claims the appeal is moot. However, "[i]f a person 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)] . . . the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied." KRS 61.880(4). Here, the Appellant brought this appeal claiming the Department had engaged in unreasonable delay, which the Office construes as a claim of subversion under KRS 61.880(4). As such, the appeal is not moot with respect to Metro's unreasonable delay. *See, e.g.*, 24-ORD-015 n.3.

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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