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25-ORD-032

February 3, 2025

In re: Ryan J. Dischinger/Louisville Metro Government

Summary: The Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it failed to issue a response within five business days of receiving it. However, Metro did not violate the Act when it denied a request for policies and procedures that are still in preliminary draft form and exempt under KRS 61.878(1)(i).

Open Records Decision

On December 14, 2025, Ryan J. Dischinger (“Appellant”) submitted a request to Metro for “all documentation available regarding policies and procedures specific to [Metro’s] Homeless Services Division.” The Appellant also requested “any policies applicable to the possession of firearms or other weapons by members of the Homeless Services Division.” On January 2, 2025, having received no response from Metro, 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.” Here, the Appellant submitted his request to Metro on December 14, 2024, but had not received a response as of January 2, 2025. Metro, on appeal, “admits that it did not provide a timely response to” the Appellant’s request. Thus, Metro violated the Act when it failed to respond to the Appellant’s requests within five business days.

On appeal, Metro now denies the request under KRS 61.878(1)(i) and (j) because “the policies and procedures requested are still in preliminary draft form containing preliminary recommendations in which opinions are expressed or policies formulates or recommended.” KRS 61.878(1)(j) exempts from inspection

“[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” This exception is distinct from KRS 61.878(1)(i), which exempts from inspection “[p]reliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.”

The distinction is important because Kentucky courts have held that “investigative materials that were once preliminary in nature lose their exempt status once they are adopted by the agency as part of its action.” *Univ. of Ky. v. Courier–Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992). But neither KRS 61.878(1)(i) nor (j) discusses preliminary “investigative materials.” Rather, KRS 61.878(1)(i) relates to preliminary drafts and notes, which by their very nature are rejected when a final report is approved. In other words, a first draft is not “adopted” when a second draft is written, and the first draft is always exempt under KRS 61.878(1)(i). *See, e.g.*, 21-ORD-089 (agency properly relied on KRS 61.878(1)(i) to deny inspection of the “first draft” of a report that was later adopted).

Here, Metro explains that the responsive records contain “thoughts and opinions” created during “the drafting process and are therefore preliminary.” Metro further explains that “[t]hese recommendations and opinions are tentative versions of information that will be used to create the final and official policies and procedures” but that “no final agency action has been taken.” The Office found that communications containing edits or suggested changes to a preliminary draft are within the scope of the “preliminary drafts” exception under KRS 61.878(1)(i). *See, e.g.*, 24-ORD-035; 22-ORD-204; 21-ORD-089; 16-ORD-180. Because the policies and procedures the Appellant requested have not been finalized, they are exempt under KRS 61.878(1)(i). Once finalized, the policies and procedures are subject to inspection if no other exception applies. *See Univ. of Ky.*, 830 S.W.2d at 378. Accordingly, Metro did not violate the Act when it denied a request for policies and procedures that have not been adopted, are still undergoing revisions, and had not yet been finalized by Metro.¹

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

¹ Because KRS 61.878(1)(i) is dispositive of the issues on appeal, it is unnecessary to address Metro’s alternative argument under KRS 61.878(1)(j).

any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

Russell Coleman
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/s/ Matthew Ray
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Distributed to:

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