



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-042

February 13, 2025

In re: Joseph Childers/University of Kentucky

**Summary:** The University of Kentucky (“the University”) did not violate the Open Records Act (“the Act”) when it denied a voluminous request for records because it would place an unreasonable burden on the agency.

### *Open Records Decision*

On November 26, 2024, attorney Joseph Childers (“the Appellant”) requested certain emails sent to or from four of the University’s senior administrators between May 1, 2022, and September 4, 2024. Specifically, the Appellant requested all “emails (including their electronic attachments) sent from or received [by] [University] email addresses, that include the names ‘DeShana, Dr. Collett, Professor Collett, Senate Council Chair Collett, SC Chair Collett’ or any other variation of [his] client’s name, Deshana Collett.” The University denied the request as “unreasonably burdensome” under KRS 61.872(6) due to the number of responsive records and the time required to review and redact them. Alternatively, the University denied the request in part under KRS 61.878(1)(i) and (j) insofar as it encompassed preliminary records pertaining to “policy issues that involved the University Senate during the time [the Appellant’s] client was Chair of that body.” Additionally, the University denied the request to the extent it included attorney-client privileged communications under KRE 503. This appeal followed.

If a request for records “places an unreasonable burden in producing public records[,] the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.” KRS 61.872(6). “When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction.” 22-ORD-221. Of these, the number of records implicated “is the most important factor to be considered.” 22-ORD-182.

Here, the University has identified 4,403 records that are responsive to the Appellant's request, consisting of 53,343 pages. Further, the University describes the requested records as "emails [of] senior administrators" during a time "when there was significant conflict with the University Senate," which "makes it certain that many of the records are preliminary<sup>[1]</sup> and/or attorney-client privileged." The University estimates, at the rate of one minute per page, it would take 889 hours to review and redact the records. Alternatively, at the rate of four minutes per record, or approximately 20 seconds per page, the University estimates review and redaction would take 294 hours. Thus, an individual employee would be required to expend somewhere between seven and 22 weeks at 40 hours per week to process the Appellant's request. In 23-ORD-076, the Office found a public agency had met its burden of "clear and convincing evidence" that it would be unreasonably burdensome to redact 71,000 records at 20 seconds per record, for a total of 394 hours of staff time. Here, the number of pages and range of time articulated by the University are commensurate with those in 23-ORD-076.

The Appellant argues the University's estimate is excessive because the University should be able to use electronic methods to identify and exclude emails that may be duplicates. However, the University asserts it has no such technology and must review each email "by hand" to determine any necessary redactions. Thus, the fact that the records are electronic does not reduce the burden of compliance here. Accordingly, the University has met its burden of proof under KRS 61.872(6) and therefore did not violate the Act when it denied the Appellant's request.<sup>2</sup>

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.

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<sup>1</sup> The Appellant's client, as a University employee, has the right under KRS 61.878(3) to inspect "preliminary and other supporting documentation" that "relates to" her, which would potentially negate the exceptions under KRS 61.878(1)(i) and (j). Nevertheless, some such records could contain her first or last name *somewhere* but "relate to" her only in part, thus being still subject to redaction under KRS 61.878(4). This is likely the case here, as the average length of each responsive email, including attachments, is over 12 pages.

<sup>2</sup> Because KRS 61.872(6) is dispositive of the issue on appeal, it is unnecessary to address the University's arguments under KRS 61.878(i) and (j) or the attorney-client privilege.

**Russell Coleman**  
Attorney General

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