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25-ORD-046

February 14, 2025

In re: Jake Thompson/University of Louisville

**Summary:** The University of Louisville (“the University”) violated the Open Records Act (“the Act”) when it delayed access to public records on the basis that it was closed for winter break. The University did not violate the Act when it did not provide records it does not possess.

***Open Records Decision***

On December 12, 2024, Jacob Thompson (“Appellant”) submitted a request to the University seeking “the video and evidence collected” on October 4, 2024, related to an investigation of the Appellant, and a video of the Appellant “in the police station” on October 30, 2024. That same day, the University responded and notified the Appellant that it would “follow up no later than” January 7, 2025, “with a response or give [the Appellant] a detailed explanation of the delay and a timeframe for response.” The University further explained that it would be “closed for winter break” from December 14, 2024, to January 1, 2025. On January 7, 2025, the University informed the Appellant that its response would now be issued on or before January 13, 2025, due to “the weather closures.” This appeal followed.

Upon receiving a request to inspect records, a public agency “shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays, 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.” KRS 61.880(1). A public agency may also 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.

Here, the University responded to the Appellant's request within five business days. But its initial response explained that it would not issue a substantive response until January 7, 2025, because of its upcoming winter break. However, this response did not cite KRS 61.872(5) or explain that responsive records were "not otherwise available." Instead, the University asserts that it did issue its response within five business days because it was closed for winter break.

The Act does not provide that an Agency's obligation to respond to a request is tolled during a closure. Rather, the Act tolls an agency's duty to "determine . . . whether to comply with the request" only on "Saturdays, Sundays, and legal holidays." KRS 61.880(1). Here, the University did not "determine" whether it would comply within five business days, but rather, stated it would respond to the request later. While the University may consider itself "closed" during winter break, such closures are not "legal holidays." See KRS 2.110 (establishing "holidays, on which all the public offices of this Commonwealth may be closed"); KRS 18A.190(1) (establishing days on which "[s]tate offices shall be closed and state employees shall be given a holiday"); see also 23-ORD-013 (finding responsive records were not "unavailable" during the University's winter break); 01-ORD-94 (finding "spring break" for public schools did not qualify as a "legal holiday" under the Act). Accordingly, the University could not rely on its self-declared winter break to postpone its response to the Appellant's request.<sup>1</sup> The University therefore violated the Act by improperly relying on its winter break to delay access to responsive records.

On appeal, the University states that it possessed no video of the Appellant "in the police station" on October 30, 2024, because "recordings from surveillance cameras are only maintained for thirty days" and the Appellant did not submit his request until December 12, 2024. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records do or should exist, then the public agency "may also be called upon to prove that its search was adequate." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

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<sup>1</sup> There is no dispute that the University received the Appellant's request before it closed for winter break. There may be instances in which an agency is actually closed, and therefore, does not receive a request because no employees are present to receive it. The time for an agency to respond to a request does not begin until after receipt of the request. KRS 61.880(1). But here, the University did actually receive the request, and then attempted to grant itself an extension of time to respond beyond five business days. This it cannot do.

Here, the Appellant has not made a *prima facie* case that these records exist. Moreover, the University explains that the requested footage was only maintained for thirty days.<sup>2</sup> Thus, even if the Appellant had made a *prima facie* case that the records existed at some point, the University has adequately explained why it no longer possesses responsive records. Accordingly, the University did not violate the Act when it could not provide these records.<sup>3</sup>

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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<sup>2</sup> The applicable retention schedule provides that Universities must maintain surveillance videos for seven days. *See* State University Model, Series U0132, “Surveillance and Access Security File,” available at <https://kdla.ky.gov/records/RetentionSchedules/Documents/State%20Records%20Schedules/KYUniversityModel.PDF> (last accessed December 10, 2025).

<sup>3</sup> The University made available some body-worn camera footage that was responsive to the first portion of the Appellant’s request. The University stated that it partially redacted the footage under KRS 61.878(1)(a). The Appellant has not challenged this portion of University’s response.