COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

25-ORD-061

March 10, 2025

In re: Thomas Rackley/Northern Pendleton Fire District

Summary: The Northern Pendleton Fire District ("the District") violated the Open Records Act ("the Act") when it did not grant or deny a request within five business days. The District also subverted the intent of the Act by claiming that it required one year to process the request.

Open Records Decision

On January 23, 2025, Thomas Rackley ("Appellant") submitted a ten-part request to the District seeking a variety of records related to the District's operations. The requested records include various forms of correspondence, camera footage, fire reports, training records, bylaws, the District's minutes, and investigations into the Appellant. In response, on January 24, 2025, the District stated it would "take the next few days to review" the Appellant's request. On February 10, 2025, having not received responsive records, 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." Further, under KRS 61.880(4), a person may petition the Attorney General to review an agency's action, short of denial of inspection, if the "person feels the intent of [the Act] is being subverted." One way in which a public agency may subvert the intent of the Act is to unreasonably delay access to the requested records. *See, e.g.*, 20-ORD-137.

On appeal, the District states it received the Appellant's request on January 23, 2025, but did not fully respond until January 31, 2025, the sixth business day

after receipt of the request. Accordingly, the District violated the Act when it failed to issue a timely response within five business days.

On appeal, the District states it informed the Appellant on January 31, 2025, that, pursuant to KRS 61.872(5), the Appellant could expect to receive responsive records on January 23, 2026 because the records are "in active use, in storage or not otherwise available." Under KRS 61.872(5), an agency may extend the time by which it must respond to a request 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.

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. For example, this Office has found that a four-month delay to provide 5,000 emails for inspection was not reasonable under the facts presented. *See, e.g.*, 21-ORD-045. However, the Office has also found that a six-month delay was reasonable to review 22,000 emails for nonexempt information. *See, e.g.*, 12-ORD-097. Further, the Office has recognized that a public agency may show its good faith when responding to a request that implicates many records by releasing those records in batches on a rolling basis. *See, e.g.*, 21-ORD-045. Ultimately, the agency carries the burden of proof to sustain its actions. KRS 61.880(2)(c).

On appeal, the District justifies its delay by describing the number of responsive records and the exemptions applicable to those records. To start, the District explains that it possesses between 14,250 and 15,100 records responsive to the Appellant's request. The District further explains that the request implicates records requiring redaction of "personal information" under KRS 61.878(1)(a), a "performance examination," EMS runs containing information exempt under KRS 311A.190(5), and preliminary notes and memoranda under KRS 61.878(1)(i) and (j). Here, by explaining the large number of records implicated by the request and the exemptions implicated by those records, the District has demonstrated that some delay was reasonable. However, the District has not demonstrated that a one-year delay was reasonable.

The Office has previously determined that a six-month delay was reasonable to review 22,000 emails for non-exempt information. *See, e.g.*, 12-ORD-097. Moreover, the Office recently concluded that a seven-month delay was reasonable in response to a request implicating roughly 39,000 records. *See, e.g.*, 24-ORD-249. There, the agency explained that the records implicated the attorney-client privilege,[1] among other exemptions, and further explained the delay caused by the manner in which the records were stored. *Id.* Moreover, the agency committed to providing the requester with responsive records in rolling batches. *Id.* Here, the Appellant seeks 24,000 fewer records than the appellant sought in 24-ORD-249, but the District seeks five more months of delay. The District also has not articulated a reason for delay caused by the locations of the records, and it has not committed to producing responsive records in rolling batches.

At bottom, the burden is on the District to justify its delay. KRS 61.880(1)(c). To do so, it was required to put forth some evidence to demonstrate why it requires *an entire year* to process a request implicating roughly 14,000 records. The District has failed to carry that burden under these facts. Thus, the District has subverted the intent of the Act by denying the Appellant's access to the requested records for one year.[2]

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.

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[1] The Office has previously recognized that the law governing confidentiality is a factor in determining whether a delay is reasonable. *See, e.g.*, 21-ORD-045 n.2 (recognizing the "tremendous disadvantage to a public agency" that could result from the disclosure of privileged material).

[2] The District, on appeal, states that the Appellant has submitted additional requests since receiving the District's January 31 response. Those requests are not the subject of this appeal because neither those request nor the District's responses thereto were submitted to the Office when initiating the appeal. *See* KRS 61.880(2)(a). Moreover, requests submitted after the District's January 31 response have no bearing on that response's compliance with the Act.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Thomas Rackley
Chief Adam Fuller, Northern Pendleton Fire District
Joseph P Cottingham, Esq.
Maurice A, Byrne, Jr., Esq.