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-064

March 17, 2025

In re: Eric Ribenboim/Louisville Metro Government

Summary: Louisville Metro Government ("Metro") violated the Open Records Act ("the Act") when it denied a request for records for failure to certify a commercial purpose when the requester stated his purpose was not commercial. Metro also violated the Act when it failed to respond to a request within five business days and failed to give a detailed explanation of the cause for additional delay as required by KRS 61.872(5). Metro further violated the Act when it denied two requests under KRS 61.872(6) without proof by clear and convincing evidence that they placed an unreasonable burden on the agency.

Open Records Decision

This appeal concerns three separate requests for public records submitted to Metro by Eric Ribenboim ("the Appellant"). On September 7, 2024, the Appellant requested a copy of all emails "sent from or to" a certain Metro employee between July 1 and December 31, 2023, containing the word "homeless." In response, Metro demanded the Appellant submit a "commercial purpose form" certifying a commercial purpose for his request. On September 9, 2024, the Appellant replied that his request was "NOT for a commercial purpose." Nevertheless, on September 23, 2024, Metro declared the Appellant's request had been "closed due to commercial purpose form not being returned." The Appellant appeals this denial of the request.

Under KRS 61.874(4), if public records are requested for a commercial purpose, the public agency may impose certain requirements, including a reasonable fee including staff costs, a certified statement of the purpose for which the records will be used, and the establishment of a contract. Accordingly, KRS 61.876(4)(c) permits the agency to inquire "[w]hether the request is for a commercial purpose." Here, however, Metro denied the Appellant's request as a commercial request after being told the request was noncommercial. "[N]othing in the Act allows an agency to deny a request, after the requester states the records will not be used for a commercial purpose, simply because the agency disagrees with the requester's answer to the

question." 24-ORD-049. Therefore, Metro violated the Act when it denied the September 7, 2024, request for failure to certify a commercial purpose.

On September 24, 2024, the Appellant requested a "copy of body camera video from all units associated with run to 4822 Poplar Level Road for event P22349308." On October 8, 2024, Metro responded to the Appellant's request. Under KRS 61.880(1), a public agency has five business days to respond to an open records request. Thus, Metro was required to respond no later than October 2, 2024.[1] By failing to respond within five business days, Metro violated the Act.

In its response on October 8, 2024, Metro claimed the video was "not otherwise available" because it must be retrieved, reviewed, and redacted, with each minute of footage requiring seven minutes for the review and redaction process. However, Metro did not state how many minutes of video were responsive to the request, but merely stated that "[s]ome requests take as little as 30 minutes to an hour to complete, while some can take over a week." Metro stated the video would "be made available on or before February 24, 2025," or five months after the date of the Appellant's request. Under KRS 61.872(5), a public agency may extend the time to fulfill a request for public records if "the public record is in active use, in storage or not otherwise available." In such cases, the agency must give "a detailed explanation of the cause [for] further delay and [the] earliest date on which the public record will be available for inspection." *Id.* However, the burden rests with the public agency under KRS 61.880(2)(c) to justify the amount of delay it claims is necessary. *See, e.g.,* 21-ORD-045. In determining whether a delay is reasonable, the Office considers the number, location, and content of the records. *See, e.g.,* 01-ORD-140; OAG 92-117. Here, however, Metro provided no information about how many minutes of video were implicated by the Appellant's request or how long it would take to process it. Accordingly, Metro failed to justify a five-month delay for producing the requested records.[2]

On October 14, 2024, the Appellant requested a copy of "body camera video from all units associated with run on report #LMPD24093380." The following day, Metro responded to that request, and also issued a superseding response to the Appellant's September 24, 2024, request. In both responses, Metro denied the requests based on its view that the cumulative volume of the requests the Appellant made in 2024 constituted an "unreasonable burden" under KRS 61.872(6).

---

[1] Metro received the Appellant's request at 4:57 p.m. on September 24, 2024. The five business days for Metro to respond under KRS 61.880(1) would have expired on either October 1 or 2, depending on whether the request was received during or after business hours on September 24.

[2] Metro's primary reason for imposing a five-month delay appears to have been the fact that it employed only four staff members to process video and had "an estimated 1,000+ pending requests for video." However, as the Office has consistently stated, neither staffing issues nor the volume of unrelated requests justifies a delayed response. *See, e.g.,* 22-ORD-134; 21-ORD-045 n.4; 19-ORD-188 n.1; 17-ORD-082.

Specifically, Metro stated the Appellant had made 168 requests for records during the nine months from January to September 2024, resulting in the production of 5,500 pages of records, plus Computer Aided Dispatch records, audio recordings of emergency calls, and body camera video. Metro stated it had spent at least 224.5 hours processing the Appellant's requests in that nine-month period, and further noted the Appellant had made a similar number of requests in both 2021 and 2022. Based on this history of multiple requests, Metro denied the pending requests from the Appellant as "unreasonably burdensome." This appeal followed.

Under KRS 61.872(6), "[i]f the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, 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." As the courts have noted, "the obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Commonwealth v. Chestnut,* 250 S.W.3d 655, 665 (Ky. 2008). "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. Thus, the burden is determined based on the nature of the pending request.

Here, however, Metro makes a novel argument, inasmuch as it does not base its denial on the particular burden posed by the requests at issue. Furthermore, Metro expressly disclaims any assertion that the Appellant "intends to disrupt agency functions." Instead, Metro claims the volume of his *past* requests makes it unreasonably burdensome for Metro to fulfill any more requests from the Appellant. Whether KRS 61.872(6) can be used in this manner is fundamentally an issue of statutory construction. Clearly, an agency may make a case under the statute that "the application," or request, for public records *currently presented* imposes an unreasonable burden. Likewise, an agency may prove it has a reasonable belief that "repeated requests" are intended to disrupt its essential functions. The question here, however, is whether "repeated requests" can constitute an unreasonable burden in the *absence* of any reason to believe the requester intends to disrupt essential agency functions.

To support its argument, Metro points to *dictum* in 06-ORD-159, in which two individuals, acting in concert, submitted a large number of record requests to the Covington Police Department over five years, some of which were duplicative of earlier requests. After finding that the duplicative portions of the requests constituted an unreasonable burden, the Office stated: "We leave for another day the

question of whether [a person's] repeated, albeit nonduplicative, requests . . . over a period of time . . . justify invocation of KRS 61.872(6) with respect to *future* requests." 06-ORD-159 (emphasis in original). Here, Metro seeks an answer to that question and, if the answer is affirmative, "guidance . . . regarding when a cumulative burden to produce additional records can be established by staff time spent or by limits on the number of requests made within a certain period."

In 96-ORD-193, the Office noted the Act places "no limitation on the number of requests . . . an applicant can submit," but stated "there is certainly a point at which the applicant's repeated use of the law becomes an abuse of the law within the contemplation of KRS 61.872(6)." The issue is how, and under what circumstances, an agency may prove such an "abuse" has been committed through multiple requests for records.[3]

To start, it is necessary to draw a distinction between multiple requests for records submitted at the same time, as mentioned in 96-ORD-193, and multiple requests spread over a period of months or years. KRS 61.872(6) refers to *"the application"* as the subject of an unreasonable burden (emphasis added). A relevant rule of statutory construction is that "[a] word importing the singular number only may extend and be applied to several persons or things, as well as to one (1) person or thing." KRS 446.020(1). Thus, in determining whether "the application" (singular) imposes an unreasonable burden on the agency, multiple *simultaneous* "applications" from one person may be considered, so that a requester cannot evade the import of KRS 61.872(6) by simply breaking up one voluminous request into numerous smaller ones. However, what constitutes an unreasonable burden if presented all at once may not constitute the same burden if presented over months or years. Thus, in KRS 61.872(6), the legislative distinction between "the application," on the one hand, and "repeated requests," on the other, is not *merely* the difference between singular and plural, but includes an element of time. Furthermore, the rule of construction in KRS 446.020(1) "is not invoked, unless necessary to carry into effect the plain and manifest intention of the Legislature." *Commonwealth v. Barnett,* 245 S.W. 874, 880 (Ky. 1922).[4] Here, the plain intention of KRS 61.872(6) is to require clear and convincing evidence of a reasonable belief of intent to "disrupt other essential functions" before an agency can deny non-duplicative "repeated requests" at different times as an abuse of the Act.

---

[3] The Office noted in 96-ORD-193 that it had received six appeals between the same parties within a one-month period, which might tend to suggest the same individual had submitted even more requests for records within that short span of time. However, the agency did not prevail because it presented no arguments to prove its case on that issue. *Id.*

[4] The Court in *Barnett* was construing the predecessor statute to KRS 446.020, which contained identical language.

Although it is difficult for an agency to prove intent to disrupt by clear and convincing evidence, it is not impossible. For example, in 02-ORD-230, intent to disrupt was established by a broadly worded request ("ALL Richmond District Court Facilities Corporate Records"), coupled with an extensive history of failure to retrieve requested records and a criminal conviction for harassing communications directed to city employees. In 15-ORD-015, intent to disrupt was found when a requester had repeatedly failed to pay for copies of voluminous records in a timely manner and demanded the agency pay him $500,000 to stop submitting requests. In 22-ORD-048, intent to disrupt was proven by a requester's repeated failure to retrieve records and requesting copies of all city ordinances, which he knew were temporarily not in the city's possession due to an ongoing digitization process. But outside such "extreme and abusive circumstances[,] it is the legislative intent that public employees exercise patience and long-suffering in making public records available for public inspection." OAG 77-151. Regardless, here, Metro has expressly disclaimed any belief that the Appellant intends to disrupt its essential functions.

At bottom, the Office declines to consider the number of previously processed requests to determine whether a *current* request poses an unreasonable burden under KRS 61.872(6). It is possible that, under the facts of a particular case, a large number of previously processed requests submitted over a period of time could be evidence that a requester intended to "disrupt other essential functions" of an agency. But here, because Metro expressly disclaimed any belief that the Appellant intends to disrupt its essential functions, the Office need not address that hypothetical scenario.[5]

Metro does, however, assert it has denied as unreasonably burdensome "26 pending, cumulative, nonduplicative requests" from the Appellant, including the two at issue here, which it claims "would have cumulatively required an estimated 138 hours to fulfill." A large number of *simultaneous* requests from one individual may, of course, cumulatively constitute an unreasonable burden. *See, e.g.,* 24-ORD-063 n.2; 96-ORD-193. However, the agency must prove such a burden by clear and convincing evidence. Here, Metro asserts it would require 138 hours to fulfill the 26 pending requests. However, "[w]hen 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-

[5] Although the Appellant stated that his requests were not submitted for a commercial purpose, Metro points to evidence it believes contradicts that assertion. KRS 61.874(5)(c) makes it "unlawful for a person to obtain a copy of any part of a public record for a [n]oncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose." The remedy for a violation of that provision is that a public agency may bring a civil action to obtain treble damages, costs, and attorney's fees under KRS 61.8745, along with any other penalty established by law. But such a violation does not justify denying the request altogether.

ORD-182. Metro, however, provides none of this information. It does not state how many records are implicated by the 26 pending requests or how it arrived at the figure of 138 hours. Nor is it clear, even if so proven, that 138 hours of staff time would constitute an unreasonable burden. *See, e.g.,* 25-ORD-047 (finding 103.9 hours of staff time to process a request did not impose an unreasonable burden). Thus, Metro has not met its burden of proof that the Appellant's *pending* requests constitute an unreasonable burden.[6] Because the Appellant's past requests, which have already been completed, do not add to that burden, Metro violated the Act when it denied the Appellant's two requests dated September 24 and October 14, 2024, based on KRS 61.872(6).

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.

Russell Coleman
Attorney General

/s/ James M. Herrick
James M. Herrick
Assistant Attorney General

#8

Distribution:

Mr. Eric Ribenboim
Alice Lyon, Esq.
Nicole Pang, Esq.
Natalie S. Johnson, Esq.
Annale R. Taylor, Esq.

---

[6] The Office does not doubt that the application of 26 requests for records in a three-day period imposes a burden on Metro. But the Office cannot assume, absent a showing made by Metro, that the burden is *unreasonable*.