



WPSD Television
100 Television Lane
P. O. Box 1197
Paducah, KY 42003

January 8, 2020

OPEN RECORDS APPEAL

The Honorable Daniel Cameron
Attorney General of Kentucky
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3349

Dear Attorney General Cameron,

Pursuant to KRS 61.880 this letter is an appeal of another failure of Marshall County Judge Executive Kevin Neal to comply with an open records request made on December 18, 2019. We have previously appealed the failure to comply with the time constraints of the Open Records Act in our letter to you of January 2, 2020. We continue that appeal and now join it with an appeal of the denial of records sought by WPSD Local 6. This letter is also a complaint pursuant to KRS 61.880 (4) that the intent of KRS 61.870 to 61.884 is being subverted by Marshall County.

I have enclosed (1) another copy of our request, (2) a letter dated January 3, 2020 from Marshall County Custodian of Records Brad Warning accompanying the **limited and incomplete response** to our request stating only, "Please find the included records from your request dated December 18, 2019," (3) the limited documents provided to us by Marshall County (4) a second, non-contemporaneous letter from Mr. Warning, dated January 7, 2020 denying our request (5) a copy of the Marshall County policy on open records from the county website (6) a copy of an email from WPSD reporter Shamarria Morrison to Marshall County Attorney Jason Darnell (7) Mr. Darnell's response (8) a screenshot of a Facebook post of an invitation stating it is from Judge Executive Kevin Neal's Office, signed by "Lance Cary, Executive Assistant."

First, KRS 61.880 (1) (2a) requires "An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action."

Mr. Warning did not comply in his one sentence letter of January 3, 2020.

His letter of January 7, 2020 is not timely and contains statements which do not comport with the law. Mr. Warning asserts "attorney-client privilege" for correspondence between Neal and "the constitutional lawyer." There is nothing that reflects such a relationship even exists. Additionally, the obligation for confidentiality attaches to the attorney not the client.

While Neal presumably could assert privilege under some circumstances, he has publically revealed the substance of the opinions and advice of the “expert” at length, thereby waiving any claim. This includes detailed discussion at the public Fiscal Court meeting of December 17, 2019. At that time Marshall County Attorney Jason Darnell warned Neal the proposed ordinance is unconstitutional.

Mr. Warning's assertion, also sidesteps the obligation to redact as a tool of compliance, though in this case we maintain it is wholly unnecessary. Even if Neal's interactions and communication with the expert were of a legal, rather than political or philosophical nature, clearly he would be acting in his official role. We believe the “client” in that case would be the people of Marshall County (and by extension The Commonwealth). Mr. Warning's further assertion “no public funds were spent in procuring those services therefore there are no documents to produce” is nonsensical. It merely serves to confirm that documents exist that should be disclosed. The public is entitled to disclosure of each and every item requested in the Open Records request.

Mr. Warning's statement about Mr. Cary is not credible. Whether compensated or not, we believe there are documents, emails, memos and the like relating to Mr. Cary and his relationship with Marshall County Government. Mr. Cary regularly identifies himself as the “Executive Assistant” to Neal.

We are deeply concerned about the actions of Marshall County, most specifically Neal, in response to our request. That concern is manifested in our complaint pursuant to KRS 61.880 (4).

“If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.”

Marshall County has ignored without explanation our request for a number of records, wrongfully denied access to others, supplied an irrelevant document (Budget Summary), willfully violated its own written policy regarding compliance and been deceitful and untruthful.

On Friday, January 3, we were notified late in the afternoon our request was fulfilled. We were told the package would be mailed. We instead advised we would appear on Monday, January 6 to collect it in person. When our reporter arrived at the county office that Monday morning at 8am, Administrative Assistant/Fiscal Court Clerk Cory Dysinger says she does not have the respondent materials. Dysinger says she will reach out to Mr. Warning. There ensued a flurry of text messages and phone calls, out of earshot. Dysinger returns and reports she's been told (she does not say by whom) **Neal** mailed them on Saturday morning. We request a tracking number. Dysinger makes more texts, goes in to another room and then returns to tell our reporter that **Neal** has the respondent material. He has removed it from the court house and taken it with him to Louisville. We are told he plans to mail it from there. Asked for an explanation, Dysinger cannot provide one. Around 9am Mr. Warning appears. He is holding a set of documents. He says to our reporter, “are these what you're looking for? They were in the judge's (Neal) truck out front.”

There then ensues a conversation, the reporter believed was staged for her benefit, between Warning and Dysinger about how the judge must have thought he had them in the vehicle he'd taken to Louisville. There is no explanation about the original contention they had been mailed on Saturday.

This is concerning obviously for a number of reasons. Neal is not the custodian of records. Warning has that responsibility. The record does not reflect that Warning was able to fulfill that responsibility. Neal should not have had possession of the final responsive material. He should not have removed it from the court house. He should not have left the material unattended in his pickup truck. We have no level of confidence that any significant effort to comply with the laws of the Commonwealth ever took place. There appears to have been no real search for emails, documents and records responsive to our request. Warning told our reporter that he really needed Neal to gather and provide relevant material, particularly email and text messages.

A review of the respondent materials, inconceivably, shows just one email exchange involving Neal. It is remarkably difficult to believe, given Neal's outspokenness on the Sanctuary movement, that he exchanged but one email with the Gun Owners of America or others he publically claimed reviewed his ordinance or even other commissioners. (We also note a text attachments of a PDF file that was not provided. There are references to an "original ordinance" and "2nd admin" ordinance also not provided). The other few emails included are between Warning and Darnell or our reporter. As you know email retrieval is typically conducted by a systematic electronic search using names of senders, receivers and key words. It seems highly unlikely that any good faith effort, if any effort at all, was made to retrieve relevant email.

There is a deeply concerning email from County Attorney Jason Darnall to our reporter on January 2.

"Ms. Morrison, per Judge Neal, the request should go out to you tomorrow. It appears as though Judge Neal thought Mr. Warning was working on it and Mr. Warning thought Judge Neal was working on it, so that probably explains the delay." Neal and Warning are copied on the email. As Custodian of Records Warning has the legal obligation to gather responsive material. The email indicates Neal somehow involved himself in an inappropriate way.

It is clear the interests of the public have not been served in Marshall County.

We respectfully request that you review the denial of our request, the unorthodox behavior of county officials, and the contempt demonstrated for the intent of the Legislature as expressed in the Open Records Act and will rule Marshall County Judge Executive Kevin Neal violated the Open Records Act.

Sincerely,

Perry Boxx
News Director
WPSD Local 6
100 Television Lane
Paducah, Kentucky 42003



WPSD Television
100 Television Lane
P. O. Box 1197
Paducah, KY 42003

January 2, 2020

OPEN RECORDS APPEAL

The Honorable Daniel Cameron
Attorney General of Kentucky
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3349

Dear Attorney General Cameron,

I am appealing on behalf of Shamarrisa Morrison and WPSD Local 6 News, the failure of Marshall County Judge Executive Kevin Neal to comply with the open records request made by both hand delivery and email on December 18, 2019. I have enclosed our request, two email statements from the County Deputy Judge Executive and related email threads. .

The two statements by Mr. Warning setting a "reasonable timeframe" for compliance are in direct contravention of the law of the Commonwealth.

We respectfully request that you review the failure to respond to our request and will decide Marshall County Judge Executive Kevin Neal violated the Open Records Act.

A handwritten signature in black ink, appearing to read "Perry Boxx".

Perry Boxx
News Director

Attachments:

- A. Open Records request
- B. Email from B. Warning #1
- C. Email to B. Warning from Perry Boxx
- D. Email to B. Warning from S. Morrison
- E. Email from B. Warning #2



WPSD Television

100 Television Lane
P. O. Box 1197
Paducah, KY 42003

A

December 18, 2019

Pursuant to the Kentucky Open Records Act, KRS 61.870 to 61.884, WPSD-TV in Paducah, KY requests copies of the following records from **The Marshall County Fiscal Court**:

- Correspondence, including but not limited to, **text messages** on phones provided by the County or for which the user of the phone is paid a stipend or reimbursed for expenses, **emails and attachments, responses and threads, letters** and other forms of communications between Marshall County, Judge Executive Kevin Neal, County Commissioner Kevin Spraggs, County Commissioner Monti Collins, and County Commissioner Justin Lamb with each other and Guns Owners of America Pennsylvania Director Val Finnell and/or other representatives of Gun Owners of America, in any combination, regarding Ordinance #2019-15 Second Amendment Sanctuary County, whether styled by that name or another.
- Correspondence, including but not limited to **text messages** on phones provided by the County or for which the user of the phone is paid a stipend or reimbursed for expenses, **emails and attachments, responses and threads, letters** and other forms of communication between Judge Executive Kevin Neal, County Commissioner Kevin Spraggs, County Commissioner Monti Collins, and County Commissioner Justin Lamb, in any combination, detailing, announcing or memorializing the decision regarding the creation of Ordinance #2019-15 Second Amendment Sanctuary County, whether styled by that name or another.
- Documents, including but not limited to text messages, emails, and other documents detailing, announcing or memorializing decisions regarding the drafting of Marshall County Ordinance #2019-15 Second Amendment Sanctuary County, whether styled by that name or another, between Judge Executive Kevin Neal and the constitutional lawyer, referenced by Neal in the December 17, 2019 fiscal court meeting as an expert on the legality of the Ordinance. This request is inclusive of documents between Judge Executive Kevin Neal and other unnamed citizens, who may or may not be attorneys by profession, whom Neal claimed at the fiscal court meeting on December 17, 2019 reviewed the ordinance prior to that meeting. If Neal asserts a lawyer client privilege with persons relevant to this request, WPSD requests documents detailing, announcing or memorializing that relationship, including but not limited to contracts, letters of agreement, retainers, authorizing ordinances for those contracts, agreements or retainers. In addition, WPSD requests copies of requisitions, purchase orders, invoices, check

requests, receipts or other financial instruments, detailing any payment of legal fees regarding the sanctuary county issue whether styled by that name or another.

- Documents relating to the employment and compensation of Lance Cary, who self-identified himself as the Executive Director of Judge Executive Kevin Neal in a letter inviting select persons to attend the December 17, 2019 fiscal court meeting. WPSD also requests copies of each and every letter. The request contemplates documents inclusive of the hiring process, notice of vacancy, applications, letters of interest and resumes, the hiring letter or Employment Agreement, notice to Human Resources and payroll officials authorizing the employment of Lance Cary, the enabling ordinance authorizing the position and other relevant records.

This request is inclusive of the time period beginning January 1, 2019 and continuing through the date of receipt of this request.

We remind you the General Assembly of the Commonwealth has declared that “free and open examination of public records is in the public interest” and the law “shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.”

This request is sent to you by email as authorized by SB 230 amending KRS 61.872 (2) effective June 27, 2019.

We request your prompt response to this request under the laws of the Commonwealth on behalf of the people of Kentucky.

Sincerely,

Shamarria Morrison



Shamarria Morrison

Journalist, WPSD Local 6

smorrison@wpsdlocal6.com

newstip@wpsdlocal6.com

C: 270.557.6998

O: 270.415.1958

CC: Perry Boxx, News Director WPSD Local 6 pboxx@wpsdlocal6.com

Perry Boxx

From: Brad Warning <brad.warning@marshallcountyky.gov>
Sent: Thursday, December 19, 2019 10:08 AM
To: Shamarria Morrison
Cc: judgeexecutive@marshallcountyky.gov; jason.darnall@ky.gov; Cory Dysinger; justin.lamb@marshallcountyky.gov; kevin.spraggs@marshallcountyky.gov; monti.collins@marshallcountyky.gov; newsteam; Perry Boxx; Lori Barrett
Subject: Re: Open Records Request: Ordinance #2019-15 Second Amendment Sanctuary County

B

I am in receipt of your Open Records Request and will respond in a reasonable timeframe.

Brad Warning
*Deputy Judge/Executive
Human Resource Director
Nuisance Code Enforcement Officer*

Marshall County Fiscal Court
1101 Main Street
Benton, KY 42025
Office: 270.527.4750
Fax: 270.527.4795
Cell: 270.206.8566
www.marshallcountyky.gov

On Dec 18, 2019, at 3:00 PM, Shamarria Morrison <smorrison@wpsdlocal6.com> wrote:

Good afternoon Judge Executive Kevin Neal:

Pursuant to the Kentucky Open Records Act, KRS 61.870 to 61.884, WPSD-TV in Paducah, KY requests copies of the following **records** from **The Marshall County Fiscal Court**:

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We request your prompt response to this request under the laws of the Commonwealth on behalf of the people of Kentucky.

Sincerely,

Shamarria Morrison
Reporter/ Multimedia Journalist
 Mobile: (270) 557-6998
 Newsroom: (270) 415-2001
 Direct Line: (270) 415-1958
 Twitter: SMorrisonWPSD
 FB: Shamarria Morrison WPSD
smorrison@wpsdlocal6.com

<image001.png>

<Open records request. Marshall County. Final.docx>

Perry Boxx

From: Perry Boxx
Sent: Thursday, December 19, 2019 11:27 AM
To: Brad Warning
Cc: Shamarria Morrison
Subject: RE: Open Records Request: Ordinance #2019-15 Second Amendment Sanctuary County

Mr. Warning,
Thank you for your email.
Please see KRS 61.880 which reads in part:

“Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) 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 three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.”

Perry Boxx
News Director
WPSD Local 6
100 Television Lane
Paducah, KY 42003
270-415-1987



“Yes, the arc of the moral universe is long, but it bends toward justice. There is something in the universe which justifies William Cullen Bryant in saying, ‘Truth crushed to earth will rise again’.”

-Dr. King (also paraphrasing Theodore Parker)

From: Brad Warning [mailto:brad.warning@marshallcountyky.gov]
Sent: Thursday, December 19, 2019 10:08 AM
To: Shamarria Morrison <smorrison@wpsdlocal6.com>
Cc: judgeexecutive@marshallcountyky.gov; jason.darnall@ky.gov; Cory Dysinger <cory.dysinger@marshallcountyky.gov>; justin.lamb@marshallcountyky.gov; kevin.spraggs@marshallcountyky.gov; monti.collins@marshallcountyky.gov; newsteam <newsteam@wpsdlocal6.com>; Perry Boxx <pboxx@wpsdlocal6.com>; Lori Barrett <lbarrett@wpsdlocal6.com>
Subject: Re: Open Records Request: Ordinance #2019-15 Second Amendment Sanctuary County

I am in receipt of your Open Records Request and will respond in a reasonable timeframe.

Brad Warning
Deputy Judge/Executive
Human Resource Director

Nuisance Code Enforcement Officer

Marshall County Fiscal Court
1101 Main Street
Benton, KY 42025
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Fax: 270.527.4795
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We request your prompt response to this request under the laws of the Commonwealth on behalf of the people of Kentucky.

Sincerely,

Shamarria Morrison
Reporter/ Multimedia Journalist

Mobile: (270) 557-6998

Newsroom: (270) 415-2001

Direct Line: (270) 415-1958

Twitter: SMorrisonWPSD

FB: Shamarria Morrison WPSD

smorrison@wpsdlocal6.com

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<Open records request. Marshall County. Final.docx>

D

On Dec 23, 2019, at 11:28 AM, Shamarria Morrison <smorrison@wpsdlocal6.com> wrote:

Good morning:

I'm following up on my open record request dated December 18th, 2019. When can I expect a response? I am aware your office is closed Christmas Eve and Christmas Day.

State law requires a public agency must respond to the request in writing and within three days, excluding Saturdays, Sundays, and legal holidays. If all or any of my request is denied, the response must include a statement of the specific exception which authorizes the agency to withhold the record, and a brief explanation of how the exception applies to the record withheld. The response must be issued by the official custodian or under his authority.

Regards,

Shamarria Morrison

Reporter/ Multimedia Journalist

Mobile: (270) 557-6998

Newsroom: (270) 415-2001

Direct Line: (270) 415-1958

Twitter: SMorrisonWPSD

FB: Shamarria Morrison WPSD

smorrison@wpsdlocal6.com

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E

From: Brad Warning [<mailto:brad.warning@marshallcountky.gov>]

Sent: Monday, December 23, 2019 11:31 AM

To: Shamarrria Morrison

Subject: Re: Open Records Request: Ordinance #2019-15 Second Amendment Sanctuary County

I responded on December 19 which met the 3 days requirement to respond. Again, we intend to complete this request in a reasonable time frame.

Brad Warning

Deputy Judge/Executive

Human Resource Director

Nuisance Code Enforcement Officer

Marshall County Fiscal Court

1101 Main Street

Benton, KY 42025

Office: 270.527.4750

Fax: 270.527.4795

Cell: 270.206.8566

www.marshallcountky.gov