



COMMONWEALTH OF KENTUCKY  
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**22-ORD-021**

February 10, 2022

In re: Eric Cunningham/Eastern Kentucky Correctional Complex

**Summary:** The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it denied a request for JPay e-mails exchanged between private parties because such records are not public records.

***Open Records Decision***

On December 21, 2021, inmate Eric Cunningham (“Appellant”) requested copies of certain messages and images sent by the Appellant to private individuals through the JPay e-mail service. The Complex initially denied the Appellant’s request because he had failed to sign it. When the Appellant resubmitted his request with a signature on December 27, 2021, the Complex denied it on the grounds that JPay e-mails are not public records. This appeal followed.<sup>1</sup>

In 20-ORD-109, a courtesy copy of which is enclosed, this Office found that JPay e-mails exchanged between inmates and private parties generally are not “public records” under KRS 61.870(2). Here, as in 20-ORD-109, there is no indication in the record that the requested e-mails are “prepared, owned, used, in the possession of or retained by a public agency” within the meaning of KRS 61.870(2). Accordingly, the requested messages and images are not

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<sup>1</sup> The Complex argues that this appeal is unperfected because the Appellant did not include a copy of his unsigned request and the initial denial. However, the Appellant provided a copy of his signed request and the corresponding denial, from which the appeal was taken. Thus, the appeal is perfected under KRS 61.880(2)(a).

public records and the Complex did not violate the Act when it denied the request.<sup>2</sup>

A party aggrieved by this decision may appeal it by initiating 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 e-mailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
**Attorney General**

/s/ James M. Herrick

James M. Herrick  
Assistant Attorney General

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Distribution:

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<sup>2</sup> Because the Appellant did not request copies of public records, it is unnecessary to consider the Complex's alternative argument that the records are exempt under KRS 61.878(1)(r) as "[c]ommunications of a purely personal nature unrelated to any governmental function."