



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-041

March 8, 2022

In re: Eric Cunningham/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (the “Complex”) violated the Open Records Act (“the Act”) when it failed to issue a response to a request under the Act within five business days and when it did not issue a notice to the requester containing the contact information of the Complex’s official records custodian as required under KRS 61.872(4).

Open Records Decision

On January 26, 2022, inmate Eric Cunningham (“Appellant”) submitted a request to the Complex for copies of certain records related to books he ordered and their shipment to the Complex. On February 4, 2022, having received no response from the Complex, this appeal followed.

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.” The Complex argues that it had ten days to respond to the request under 2020 SB 150, which passed during the 2020 Regular Session of the General Assembly. As explained in 22-ORD-009, however, the General Assembly amended KRS 61.880(1) during the 2021 Regular Session with the passage of 2021 HB 312. Simply put, public agencies have five business days

to respond to requests submitted under the Act.¹ KRS 61.880(1). Accordingly, the Complex violated the Act when it did not respond to the Appellant's request within five business days.

On appeal, the Complex claims that the Appellant's request "was addressed to the [Complex's] property room instead of to the [Complex's] Open Records Coordinator." Thus, the Complex argues that it did not issue a timely response because the Appellant sent his request to the wrong person. Under KRS 61.872(4), "[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records."

The Complex argues that Corrections Policy and Procedure ("CPP) 6.1, which is incorporated by reference by administrative regulation 501 KAR 6:020 § 1, requires inmates to submit their requests to inspect records to the Complex's official records custodian. The Complex cites several previous decisions of this Office that affirmed a correctional facility's denial of a request for an inmate's failure to comply with CPP 6.1. *See, e.g.*, 17-ORD-042; 12-ORD-091; 04-ORD-004. In these decisions, the Office upheld the correctional facility's requirement that inmates provide more personal identification than is required of private citizens, such as the inmate's identification number, cell number, and other such information. This Office has also specifically affirmed a correctional facility's denial of a request that was not submitted by institutional mail and was not addressed to the correctional facility's official records custodian. *See, e.g.*, 17-ORD-42. This Office reached these conclusions after considering the unique security concerns associated with correctional facilities, as well as the unique exemption that prohibits inmates from obtaining copies of records that do not make a specific reference to the requesting inmate. *See* KRS 197.025(2).

The General Assembly has also considered the unique circumstances associated with inmates' requests to inspect records and enacted KRS 197.025

¹ Under KRS 197.025(7), a correctional facility must respond to requests submitted by inmates within five business days of receipt. Now that KRS 61.880(1) has been amended to require all public agencies to respond to requests made under the Act within five business days, the distinction between KRS 197.025(7) and KRS 61.880(1) is no longer relevant

in response. To the extent that KRS 197.025 conflicts with any provision of KRS 61.870 to KRS 61.882, the former statute controls over the latter statutes. *See Porter v. Commonwealth*, 841 S.W.2d 166, 168 (Ky. 1992). But KRS 61.872(4) requires an employee of any public agency to whom a request was sent in error to notify the requester and provide the correct contact information for the agency's records custodian. No provision of KRS 197.025 conflicts with KRS 61.872(4).

If an inmate submits a request to inspect records to an employee other than the correctional facility's official custodian of records, the correctional facility must notify the inmate of his or her error and provide the contact information for the correctional facility's official records custodian. KRS 61.872(4). The correctional facility cannot simply ignore the request because it was sent to the wrong employee. Although this Office has historically given wide discretion to correctional facilities that claim security concerns necessitate certain actions taken by them, this Office does not see how the Complex's security is jeopardized by notifying the Appellant that he sent his request to the wrong person and providing him with the contact information for the Complex's official records custodian. Accordingly, the Complex violated the Act when it failed to notify the Appellant that his request was sent to the wrong person, or otherwise provide him with the contact information for the Complex's official records custodian.

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 emailed to OAGAppeals@ky.gov.

Daniel Cameron
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/s/Matthew Ray
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Distributed to:

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