



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-108

May 23, 2022

In re: Deon'tae Williams/Kentucky State Penitentiary

Summary: A request that a public agency preserve a record for future inspection is not a request to inspect a public record under the Open Records Act (“the Act”).

Open Records Decision

On April 8, 2022, inmate Deon'tae Williams (“Appellant”) made a request to the Kentucky State Penitentiary (“the Penitentiary”) that certain security camera footage be “saved’ for inspection/viewing.” The Penitentiary considered the request to be a request to inspect the footage, and responded that the footage would not be provided to the Appellant for inspection or copying because its release would constitute a security threat under KRS 197.025(1) and KRS 61.878(1)(l). This appeal followed.

On appeal, the Appellant explains that he is “asking not to view/inspect the camera footage at this moment, but only that camera footage be saved/preserved for the courts to view as evidence” in a civil action (underline original). The Penitentiary, however, asserts that “an open records appeal is not the appropriate forum for such a request.” This Office agrees.

Under KRS 61.880(2)(a), “[i]f a complaining party wishes the Attorney General to review a public agency’s denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection.”¹

¹ See also 40 KAR 1:030 § 1 (“The Attorney General shall not consider a complaint that fails to conform to . . . KRS 61.880(2), requiring the submission of a written request to the public agency and the public agency's written denial, if the agency provided a denial.”).

After an appeal is perfected, “[t]he Attorney General shall review the request and denial and issue . . . a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.” *Id.* As this Office has recently noted, “an administrative agency has no authority to take action that is not expressly provided by the legislature.” *See* 22-ORD-078. KRS 61.880(2)(a) does not provide this Office with authority to review an agency’s disposition of a request to “save” or “preserve” a public record, but only of a request “to inspect a public record.” *See, e.g.,* 20-ORD-067; 17-ORD-064; 15-ORD-121. Because the Appellant did not request to inspect a public record, this Office lacks the statutory authority to review the Penitentiary’s action. The Office therefore dismisses the appeal.

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
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s/James M. Herrick
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Distributed to:

Deon'tae Williams, #292041
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