



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

22-ORD-117

May 23, 2022

In re: Roger Allcock/Kentucky Department of Fish and Wildlife

Summary: To invoke the Office of Attorney General’s (“the Office”) statutory authority to review an agency’s response to a request submitted under the Open Records Act (“Act”), the requester must provide a copy of his or her original request and the agency’s response.

Open Records Decision

On October 14, 2021, Roger Allcock (“Appellant”) submitted a request to the Department for paper copies of all “email[s], text message[s], phone calls, memo[s], person to person talks,” or any other forms of communications related an “internal legal memorandum from [a Department] staff attorney to [an] acting commissioner [for the Department]” issued on January 4, 2019, regarding the “right of public navigation over lands submerged by flooded watercourses.” On April 18, 2022, the Appellant appealed to this Office. Attached to his appeal was a December 14, 2021 email, from the Department, that stated, “[t]hank you for your inquiry, the [Department] has responded to your open records request with all of the responsive documents housed at the [Department].”¹ The Appellant claims that the Department’s communication issued on December 14 violated that Act.

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

¹ It is unclear if the December 14, 2021, email was a response to the original request or if it was a response to a separate inquiry as part of some subsequent email exchange between the Appellant and the Department.

and a copy of the written response denying inspection.” This Office’s review of an agency’s response to an open records request is an administrative procedure established under KRS 61.880(2). “In statutory proceedings, the words of the statute are paramount.” *Kenton County Bd. of Adjustment v. Meitzen*, 607 S.W.3d 586, 594 (Ky. 2020). Such statutory procedures are matters of “legislative grace,” and the person seeking to initiate such a procedure must “strictly comply” with the statutes that establish the procedure. *See id.* at 593.

This Office has previously explained to the Appellant that he must “strictly comply” with KRS 61.880(2)(a), by including a copy of the agency’s written denial with his appeals to this Office.² *See, e.g.*, 22-ORD-078 (an appeal involving the same Appellant and the same legal memorandum was dismissed because the Appellant failed to include the agency’s written denial).

On appeal, the Department argues that the Appellant has failed to properly invoke this Office’s statutory authority because he did not provide a copy of the Department’s final response to the request. The Department provides proof that it issued a letter, dated October 21, 2021, which constituted the Department’s response to the Appellant’s October 14, 2021 request. Moreover, in the December 14 communication that the Appellant claimed was the Department’s response, the Department had stated that it had previously responded to the Appellant’s request and provided responsive records. Thus, the evidence in the record demonstrates that the Appellant did not comply with KRS 61.880(2)(a), because he did not provide this Office with a copy of the agency’s response to his request. Accordingly, the appeal is dismissed. 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.”).³

² Usually if a person fails to include anything required under KRS 61.880(2)(a) such as the agency’s written denial this Office will inform that person of such and instruct them to provide the missing documents. Here, however, the written response the Appellant submitted appeared to be a complete response from the agency, so this Office processed this appeal. It was not until after the appeal was initiated that the Department provided its complete original written response and that it was apparent the Appellant failed to do so when he initiated this appeal.

³ Even if the Appellant had appropriately invoked this Office’s jurisdiction, the Department claims to have provided all responsive records, except those documents protected by the attorney-client privilege. *See* KRE 503; *see also* 21-ORD-260 (agency denial upheld when it separated the privileged material and provided the non-privileged material). The Department also properly redacted a personal

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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
Attorney General

s/Matthew Ray
Matthew Ray
Assistant Attorney General

#161

Distributed to:

Roger Allcock
Steven Fields

email address under KRS 61.878(1)(a). *See, e.g.*, 14-ORD-197 (upholding an agency's redaction of personal email addresses under KRS 61.878(1)(a)).