



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-200

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In re: Jake Thompson/Kentucky State Police

Summary: The Office cannot find that the Kentucky State Police (“KSP”) violated the Open Records Act (“the Act”) when it did not respond to a request to inspect records that it claims it did not receive.

Open Records Decision

On August 12, 2022, Jake Thompson (“Appellant”) faxed a request containing two subparts to KSP for copies of records. On September 2, 2022, having received no response from KSP, this appeal followed.¹

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). However, this Office has historically found that it is unable to resolve factual disputes between a requester and a public agency, such as whether an agency received a request. *See, e.g.*, 22-ORD-124; 22-ORD-100; 22-ORD-051; 21-ORD-163.

Here, it is undisputed that KSP did not respond to the Appellant’s request. However, on appeal, KSP claims that it did not respond because it did not receive the

¹ Subpart one of the request was for a copy of all contracts and agreements between companies doing business as “Identogo” or “Idemis Identity & Security USS, LLC” and KSP. Subpart two was for “a copy of any and all policies, regulations, and statutes which grants [KSP] the authority to enter into an exclusive contract with Identogo and/or Idemia Identity 4 Securitiy USA, LLC.” On appeal, KSP provides 177 pages of records to the Appellant that are responsive to subpart one of his request. Under 40 KAR 1:030 § 6, “[i]f the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.” Since the Appellant has been provided the records requested in subpart one of his request, issues related to that subpart are now moot. *Id.*

Appellant's faxed request. This Office is unable to resolve the factual dispute between the parties about whether KSP received the Appellant's request. Thus, this Office cannot find that KSP violated the Act when it failed to respond within five business days to a request it claims it did not receive.²

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

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Distributed to:

Jake A. Thompson
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² After receiving the Appellant's request on appeal, KSP denied subpart two of the request because it claimed "reference materials, including statutes, administrative regulations, and case law" are excluded under KRS 61.870(2) and cited three previous decisions from the Office 18-ORD-239, 99-ORD-181, and 99-ORD-35. The Appellant has not indicated whether he challenges KSP's denial of this subpart of his request. Rather, the Appellant appealed to this Office because he claimed KSP failed to respond to his request within five business days. The Office declines to consider this new issue on appeal absent a specific request by the Appellant to do so. *See, e.g.*, 21-ORD-177 (the Office may decline to consider new issues raised by the parties' subsequent correspondence on appeal because the Office discharges its duty under KRS 61.880(2)(a) when it reviews the request, the agency's response thereto, and decides whether the agency violated the Act).