



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-207

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In re: Leonel Martinez/City of Owensboro

Summary: Under 40 KAR 1:030 § 4, the Attorney General shall not reconsider a prior decision rendered under the Open Records Act (“the Act”). This Office will not reconsider 16-ORD-114, in which it found that the City of Owensboro (“the City”) did not violate the Act when it did not provide a record that does not exist in its possession.

Open Records Decision

Leonel Martinez (“Appellant”) submitted a request to the City to inspect an “MPD video” related to his arrest and conviction.¹ However, the Appellant had previously requested to inspect this exact record, the denial of which was the subject of an appeal to this Office. *See* 16-ORD-114. As it did previously, the City denied the request because the record does not exist in its possession. This appeal followed.

Under 40 KAR 1:030 § 4, “[t]he Attorney General shall not reconsider a decision rendered under the Open Records Law.” In 20-ORD-148, this Office found that a second appeal between the same parties concerning the exempt status of a record would amount to improper reconsideration when “the facts and issues [were] identical to those in the previous decision.” In 16-ORD-114, this Office found that the City did not violate the Act when it did not produce the record because the record does not exist. The Appellant provides no reason to distinguish this appeal from the facts and issues adjudicated in 16-ORD-114. If the Appellant disagreed with this Office’s decision in 16-ORD-114, his recourse was to appeal that decision to circuit court. *See* KRS 61.880(5). He may not, however, seek this Office’s reconsideration by submitting a new request for the same record. Accordingly, the appeal is dismissed.

¹ “MPD” refers to MPD, Inc., a private company headquartered in Owensboro, Kentucky.

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.

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