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OFFICE OF THE ATTORNEY GENERAL

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**22-ORD-215**

October 14, 2022

In re: Darnell Chivers/Fayette County Detention Center

**Summary:** Because a person seeking this Office’s review of a denial of a request to inspect records must provide “a copy of the written request,” KRS 61.880(2)(a), the Office lacks jurisdiction to review a public agency’s denial if the request was communicated orally.

***Open Records Decision***

Inmate Darnell Chivers (“Appellant”) claims he submitted a three-part request to inspect records to the Fayette County Detention Center (“the Center”) on August 5, 2022. He seeks this Office’s review of a denial he received from the Detention Center on August 29, 2022. But the Appellant cannot invoke this Office’s jurisdiction to review that denial because the Appellant communicated his request to the Detention Center orally. In other words, he cannot “forward to the Attorney General a copy of *the written* request and a copy of the written response denying inspection.” KRS 61.880(2)(a). Accordingly, the Office dismisses the appeal.

“Any resident of the Commonwealth shall have the right to inspect public records.” KRS 61.872(2)(a). While counterintuitive, the Act does not actually require a person to submit a request to inspect records in writing. Rather, the Act gives discretion to the “official custodian [who] *may* require a written application, signed by the applicant and with his or her name printed legibly on the application, describing the records to be inspected.” *Id.* (emphasis added). However, unlike the records custodian, the Attorney General has no such discretion.

In 22-ORD-165, this Office explained its role in deciding disputes under the Open Records Act. As stated in that decision,

When reviewing a dispute under KRS 61.880, this Office sits as an administrative adjudicative body. Under Kentucky law, administrative proceedings are creatures of statute and are provided as a matter of grace by the General Assembly. *See, e.g., Kenton Cnty. Bd. of Adjustment v. Meitzen*, 607 S.W.3d 586, 594 (Ky. 2020) (administrative appeals are statutory proceedings that require strict compliance with the enabling statutes). Thus, when a person seeks this Office’s review under KRS 61.880, he must strictly comply with that statute. *See, e.g., 22-ORD-078* (dismissing an appeal that failed to comply with KRS 61.880).

To invoke this Office’s review, a person “shall forward to the Attorney General a copy of *the written* request.” KRS 61.880(2)(a) (emphasis added). A request communicated orally is by definition not a written request.

Here, the Appellant provides a handwritten request that he claims is a copy of the request he submitted to the Detention Center.<sup>1</sup> Under KRS 61.880(2)(c), this Office asked the Detention Center to provide a copy of the written request it received from the Appellant. The Detention Center provided a copy of an email memorializing the Appellant’s oral request and stated it never received a written request from the Appellant.<sup>2</sup> Because the Appellant did not submit a written request to the Detention Center, he did not “forward to the Attorney General a copy of *the written* request.” KRS 61.880(2)(a); *see also* KRS 197.025(3) (requiring a person confined in a penal facility to forward to the Attorney General “the appropriate documents” to initiate an appeal). Accordingly, the appeal is dismissed.

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

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<sup>1</sup> He claims to have asked for three categories of records, but the Detention Center’s response only addressed one category of records—video surveillance footage. The Detention Center granted the Appellant’s request for video footage of his property being “packed,” but denied his request for other video footage under KRS 197.025(2) because such video did not make a specific reference to the Appellant.

<sup>2</sup> The Detention Center’s email memorializing the Appellant’s request does not include additional records the Appellant claims to have requested. This illustrates why the General Assembly requires requesters seeking this Office’s review to provide a copy of “the written” request. The Office cannot find that an agency violated the Act in response to a request if the request submitted on appeal is different than the request the agency received.

any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to [OAGAppeals@ky.gov](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/Marc Manley  
Marc Manley  
Assistant Attorney General

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