



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-005

January 13, 2023

In re: Lawrence Trageser/Jeffersontown Fire Protection District

Summary: This Office cannot find that the Jeffersontown Fire Protection District (the “District”) failed to issue a timely response to a request to inspect records, in violation of the Open Records Act (“the Act”), when it claims it did not receive the request.

Open Records Decision

On November 18, 2022, Lawrence Trageser (“Appellant”) emailed to the District a request for copies of all open records requests submitted to the District within a specific period, except those he had submitted, and the District’s responses to those requests.¹ On December 12, 2022, having received no response from the District, the Appellant initiated this appeal.

When an agency receives a request under the Act, it “shall determine within five (5) [business] days . . . *after the receipt* of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1) (emphasis added). If an agency denies in whole or in part the inspection of any record its response must include “a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.*

¹ The Appellant submitted two requests to inspect records to the District, but he is only appealing the District’s alleged failure to respond to his second request.

Here, the Appellant claims he submitted his request to the District on November 18, 2022, but the District never responded to it. However, on appeal, the District explains it did not respond to the Appellant's request because it did not receive it until December 12, 2022, when it received notice of this appeal. The Office has consistently found it is unable to resolve factual disputes between a requester and a public agency, such as whether an agency received a request to inspect records. *See, e.g.*, 22-ORD-216; 22-ORD-148, 22-ORD-125; 22-ORD-100; 22-ORD-051; 21-ORD-163. As a result, this Office is unable to find that the District violated the Act.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:

Lawrence Trageser
Sean F. Dreisbach
Maurice A. Byrne

² After the appeal was initiated, the Appellant and the District arranged a time for the Appellant to inspect the requested records in-person at the District's facility. The Appellant claims he was able to inspect and scan "1,200 documents," but he also claims there should be more records in addition to those he inspected. Disputes about whether all responsive records have been provided are also factual disputes the Office is incapable of resolving. *See, e.g.*, 22-ORD-261; 22-ORD-010; 19-ORD-083 (stating the Office cannot "resolve the factual dispute between the parties regarding the disparity between records which have been provided and those sought but not provided").