



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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**23-ORD-008**

January 20, 2023

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 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 a “video” related to his arrest and conviction. However, the Appellant has previously submitted two requests to inspect this exact record, the denials of which have been the subject of previous Open Records Decisions by this Office. *See* 22-ORD-207; 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 the City did not violate the Act when it did not produce the record because the record does not exist. The Appellant provides no facts or issues here that distinguish this appeal from the facts and issues at issue 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 the circuit court. *See* KRS 61.880(5). He may not, however, seek this Office’s reconsideration by submitting a duplicate request for the same record and appealing the City’s denial of the duplicate request. Accordingly, the appeal is dismissed.

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.

**Daniel Cameron**  
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s/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
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Distributed to:

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