



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-036

February 16, 2023

In re: Lawrence Trageser/Kentucky Department of Corrections

Summary: This Office cannot find that the Kentucky Department of Corrections (“the Department”) violated the Open Records Act (“the Act”) because this Office is unable to resolve the factual dispute of whether a requester received a public agency’s response once the public agency provides proof that the response was mailed.

Open Records Decision

On January 9, 2023, Lawrence Trageser (“Appellant”) submitted a request for records to the Department for “the personnel file” and visitor’s log for a specific inmate.¹ On January 9, 2023, the Department confirmed receipt of the request. On January 20, 2023, the Appellant initiated this appeal and claimed he received no further response from the Department.

On appeal, the Department claims it issued a timely response to the Appellant’s request and the appeal is unperfected because he did not provide the Office a copy of that response. As proof, the Department submits a copy of a letter dated January 12, 2023, where it informed the Appellant that it required “additional time” to gather responsive records because of “the extensive number of records being requested” and the need to review and redact them. The Department also stated its open records coordinator would be out of the Office until January 20, 2023. Thus, the

¹ Although the Appellant repeatedly requested “the personnel file” of this individual, it is not clear whether this inmate was a former employee of the Department. Generally, “personnel files” relate to employment records. Presumably, the Appellant sought the individual’s personal inmate file.

Department informed the Appellant that it would issue a final response on or before February 17, 2023. As proof that the Appellant received its January 12, 2023 letter, the Department provides a certified mail receipt that appears to have been signed by the Appellant on January 20, 2023.

When an agency receives a request under the Act, it is required to respond to the request and provide any nonexempt responsive records within five business days. KRS 61.880(1). However, an agency may extend this time if the records are “in active use, in storage or not otherwise available,” so long as the agency gives the requester “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection.” KRS 61.872(5).

Here, the Appellant claims he did not receive any response from the Department other than an email confirming it had received his request on January 9, 2023. Although the certified mail receipt does not show when the Department mailed its response, the Department’s response is dated January 12, 2023, which would have been timely if it was mailed on that day. This Office is unable to resolve factual disputes such as these. *See, e.g.,* 22-ORD-159; 21-ORD-233. Accordingly, this Office cannot find that the Department failed to issue a timely response to the Appellant’s request.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.

² Because the Appellant’s submission of the appeal and delivery of the Department’s response appear to have crossed each other on the same day, the Appellant did not have a copy of the response to attach to his appeal. Accordingly, he did not directly challenge the Department’s invocation of KRS 61.872(5) to delay his access to records. However, the Office notes that an agency cannot rely on employee absences to delay access to records under KRS 61.872(5), because that statute only permits delay if the requested records themselves are “not otherwise available.” *See, e.g.,* 23-ORD-013.

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Distributed to:

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