



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**23-ORD-037**

February 16, 2023

In re: Eric Hermansen/Kentucky State Penitentiary

**Summary:** To invoke the Attorney General's statutory authority to review an agency's response to a request submitted under the Open Records Act ("the Act"), the requester must provide a copy of his or her original request and the agency's response thereto.

***Open Records Decision***

To invoke this Office's jurisdiction to review a complaint that an agency has violated the Act, a person must provide the Office with a copy of the request to inspect public records he submitted to a public agency. KRS 61.880(2)(a). He must also provide a copy of the agency's response denying the request, if such a denial was issued, or state that the agency failed to respond to the request. *Id.*

On January 17, 2023, Inmate Eric Hermansen ("the Appellant") attempted to initiate an appeal to this Office and claimed the Kentucky State Penitentiary ("the Penitentiary") had violated the Act when it cited KRS 197.025(1) and (2) to withhold his mail. He provided a request he submitted to the Penitentiary on January 9, 2023, in which he sought to inspect a copy of an "appeal" he submitted to the warden regarding the rejection of his mail. He also provided a letter from the Penitentiary dated January 11, 2023, in which it stated "[t]his is in reference to your mail rejection appeal for the mail sent by" another inmate. The Penitentiary further stated his "appeal is denied" under KRS 197.025(1) and (2).

Because it appeared the Appellant provided a copy of a request to inspect records and the Penitentiary's response, the Office processed the appeal and sent notice to the Penitentiary. In response to that notice, the Penitentiary explains the Appellant provided a copy of its response to his "mail rejection appeal," not its response to his open records request. The Penitentiary actually granted the

Appellant's request, and among the responsive records it provided was its January 11 decision denying his "mail rejection appeal" under KRS 197.025(1) and (2). Accordingly, the Appellant did not comply with KRS 61.880(2)(a) because he did not provide all necessary documents and his appeal is dismissed.<sup>1</sup>

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 emailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
Attorney General

s/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

#032

Distributed to:

Eric Lloyd Hermansen #126673  
Amy V. Barker  
Lydia C. Kendrick  
Ann Smith

---

<sup>1</sup> The Appellant confirms on appeal that he seeks this Office's review of the Penitentiary's denial of his grievance relating to mail being withheld from him. But KRS 61.880(2)(a) only authorizes this Office to determine whether an agency's disposition of a request to inspect records complied with the Act. The Office cannot express opinions on ancillary questions of law in the context of an open records appeal. *See, e.g.,* 22-ORD-274 n.4; 22-ORD-137 n.1. However, the Office notes that a correctional facility "shall not be required to comply with *a request* for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which contains a specific reference to that individual." KRS 197.025(2). Mail addressed to an inmate is not a "request for" a public record.