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**23-ORD-092**

April 24, 2023

In re: Michael Harper/Covington Police Department

**Summary:** The Office cannot find that the Covington Police Department (the “Department”) violated the Open Records Act (“the Act”) when it did not respond to a request that it did not receive.

***Open Records Decision***

Inmate Michael Harper (“Appellant”) claims that on March 3, 2023, he submitted a request for records to the Department containing two subparts. First, the Appellant requested a “[c]opy of all written statements from victims and witnesses” obtained by the Department during its investigation of his criminal case. Second, the Appellant requested “[a]ll laboratory documentation, testing collection involved [*sic*] in” the same case. On March 22, 2023, having received no response from the Department, the Appellant initiated this appeal.

On appeal, the Department explains it did not respond to the Appellant’s request because it did not receive that request until it received notice of this appeal. Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request or deny it.<sup>1</sup> KRS 61.880(1). But here, the Department claims it never received the request, and thus, the statutory period to

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<sup>1</sup> Or, if the records are “in active use, in storage or not otherwise available,” the agency may delay access to the records if it 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, after receiving a copy of the Appellant’s request as part of this appeal, the Department responded that the requested records were “in storage” and not “readily available” because of their age. The Department stated it would provide the Appellant with responsive records by April 5, 2023. However, as of the date of this decision, it is not clear whether the Department has indeed provided the Appellant with the requested records.

respond did not begin until it received a copy of the request with 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.*, 23-ORD-071; 23-ORD-005; 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 resolve this factual dispute or find that the Department violated the Act.

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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
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s/ Matthew Ray  
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Distributed to:

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