



COMMONWEALTH OF KENTUCKY  
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**23-ORD-096**

April 26, 2023

In re: Jimmie Hall/Butler County Commonwealth's Attorney

**Summary:** The Butler County Commonwealth's Attorney (the "Commonwealth's Attorney") violated the Open Records Act ("the Act") when it failed to respond to a request within five business days of receiving it.

***Open Records Decision***

On March 12, 2023, inmate Jimmie Hall ("Appellant") submitted a request to the Commonwealth's Attorney for records related to a cell phone seized in his criminal case. On March 27, 2023, having received no response from the Commonwealth's Attorney, the Appellant initiated this appeal.

Under KRS 61.880(1), upon receiving a request to inspect records under the Act, a public agency "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." The Commonwealth's Attorney does not deny that he received the Appellant's request or claim that he issued a timely response. Rather, in response to this appeal, the Commonwealth's Attorney states only that he would address this matter with the Appellant's attorney, rather than responding to the Appellant directly.

The Office recognizes the ethical obligations of attorneys to not engage in direct communications with adverse parties represented by counsel regarding the subject matter of the representation. *See* SCR 3.130(4.2). However, the rule does not prohibit an attorney from communicating with a represented adverse party who initiated the communication if the extent of the communication is for the sole purpose of informing

the party that the attorney will not communicate with him and will only speak to his retained counsel. *See id.* at comment 4 (a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so). In the context of requests to inspect records, the Act not only provides the “independent justification or legal authorization” for a prosecutor to respond to a criminal defendant’s request, but also, it *requires* the prosecutor to respond within five business days of receiving the request. KRS 61.880(1). Thus, when a prosecutor receives from a criminal defendant represented by counsel a request to inspect records pertaining to the criminal matter, the prosecutor must at a minimum respond to the request and inform the defendant that his request is being denied, either because SCR 3.130(4.2) prevents further communications with the defendant or because the records are exempt under KRS 61.878(1)(h), which exempts from inspection the case files of Commonwealth’s and County Attorneys, or better yet, for both reasons. Simply put, a public agency may not ignore a request to inspect records, unless under a court order of no-contact. *See, e.g.*, 21-ORD-164 (a law enforcement agency did not violate the Act when it relied on a court order of no-contact to not respond to an inmate’s request for records). Here, the Commonwealth’s Attorney does not dispute having received the Appellant’s request or otherwise claim to have timely issued a response. Accordingly, he did not comply with KRS 61.880(1).<sup>1</sup>

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**  
**Attorney General**

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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<sup>1</sup> On appeal, the Commonwealth’s Attorney advises he has spoken with the Appellant’s attorney regarding this matter and has provided him with most of the requested records. However, a dispute remains between the parties regarding the logistics of providing access to some highly sensitive materials. That dispute is currently before the Butler County Circuit Court.

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Distributed to:

Jimmy Hall #278442  
Blake Chambers