



COMMONWEALTH OF KENTUCKY  
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**23-ORD-105**

May 8, 2023

In re: Glenn Odom/Kentucky State Penitentiary

**Summary:** The Kentucky State Penitentiary (the “Penitentiary”) did not violate the Open Records Act (“the Act”) when it issued a timely response to a request to inspect records. This Office cannot resolve the factual dispute regarding whether the Penitentiary received a third request. A requester cannot perfect an appeal to this Office claiming an agency failed to respond to a request until the sixth business day after sending the request.

***Open Records Decision***

On February 13, 2023, inmate Glenn Odom (“Appellant”) submitted the first of three requests for records to the Penitentiary. The first request sought “the actual e-mail [or] FAX” that was used to transmit a specific affidavit from a deputy warden to the Penitentiary’s attorney. The second request, dated February 21, 2023, sought “to inspect [the Appellant’s] mental health file.” The third request, which was undated, sought “proof of the date that [the Appellant] last talked to I.A. and what it was about.” On February 21, 2023, he initiated this appeal, claiming he did not receive a response to any of his requests.

Under the Act, a public agency has five business days *from receipt* of a request to inspect records to fulfill it, or deny it and explain why. KRS 61.880(1); KRS 197.025(7). The date a public agency receives a request to inspect records does not count towards the five-business-day period. KRS 446.030(1) (“In computing any period of time prescribed or allowed by . . . any applicable statute . . . the day of the act, event or default after which the designated period of time begins to run is not to be included”); *see also* 22-ORD-203. If a person seeks this Office’s review of a public

agency's denial of a request to inspect records, he must provide the Office with a copy of both his request and the public agency's response to it. KRS 61.880(2)(a). If, however, a requester is challenging the public agency's failure to issue a timely response, he need only provide the Office a copy of his request and state that he has not received a response. *Id.* Of course, a person cannot claim that a public agency failed to timely respond to a request if a minimum of six business days have not elapsed since the date the request was *sent*, because if the request was received on the day it was sent, the public agency's response would be due five business days thereafter. In other words, when a person seeks this Office's review to allege a public agency's alleged failure to respond to a request that is dated less than six business days from the date of the appeal, his appeal is premature, unperfected, and will be summarily dismissed. KRS 61.880(2)(a); *see also* 20-ORD-175.

Here, the Appellant initiated his appeal on February 21, 2023. His request for his mental health records was dated the same date. Thus, the Appellant's claim that the Penitentiary failed to timely respond to this request is premature, when he did not even allow one day for the Penitentiary to respond. Accordingly, this part of his appeal is dismissed.

The Penitentiary also provides proof it received on February 23, 2023, the Appellant's first request, dated February 13, 2023. It timely responded the same day it received that request, and therefore, did not violate the Act.

Finally, the Appellant provides an undated request, in which he sought "proof of the date that [he] last talked to I.A. and what it was about." On appeal, the Penitentiary provides proof it timely responded to a similar request, in which the Appellant sought "proof which shows the last time [he] ever talked to I.A." The Penitentiary denied that similar request because no responsive records exist. Thus, the request the Appellant submits on appeal is duplicative of an earlier request the Penitentiary had denied. It is unclear, however, if the Penitentiary received the undated request submitted with this appeal and failed to respond, or if the Appellant has brought that undated request to this Office prematurely. The Office need not resolve that factual dispute, however, because the Penitentiary has already once denied the Appellant's request for these records because they do not exist, and the Appellant has not made a *prima facie* case that the records do or should exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Accordingly, the Office cannot find that the Penitentiary 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.

**Daniel Cameron**  
**Attorney General**

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

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