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OFFICE OF THE ATTORNEY GENERAL

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**23-ORD-110**

May 22, 2023

In re: William Michael Fields, Jr./City of Cynthiana

**Summary:** This Office cannot find that the City of Cynthiana (the “City”) violated the Open Records Act (“the Act”) when it did not respond to requests it did not receive.

***Open Records Decision***

Inmate William Michael Fields Jr. (“Appellant”) claims that on August 29, 2022, he submitted the first of four requests to the City to inspect records “pertaining to the investigation” involving him and his subsequent arrest. Although it is not clear from this record when the City responded to that request, the Appellant claims he received from the City only “one single screenshot of a text message between an alleged victim and the detective who lead [sic] the investigation.”

The Appellant also claims to have submitted two additional requests on December 27, 2022. Those requests sought the “personnel files” of an identified officer and any text messages exchanged between the alleged victim and that same officer. However, he did not sign either of those requests.<sup>1</sup> The Appellant further claims he sent a fourth request to the City on January 25, 2023, but he did not include a copy of that request on appeal. On March 7, 2023, the Appellant initiated this appeal and

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<sup>1</sup> The Office also notes the Appellant is currently incarcerated in South Carolina, and therefore, it is not clear whether he qualifies as a “resident of the Commonwealth” under KRS 61.870(10). Only “residents of the Commonwealth” have a statutory right to inspect public records. See KRS 61.872. The Appellant claims to have submitted his requests through a power of attorney, but only his first request is signed by his attorney-in-fact. His remaining requests were not signed by him or his attorney-in-fact, and it is not clear whether his attorney-in-fact qualifies as a “resident of the Commonwealth” under KRS 61.870(10).

claimed the City's response to the August 29, 2022 request was incomplete, and that it failed to respond to the three others.

Under KRS 61.880(2)(a), "[i]f a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection." This Office's review of an agency's response to an open records request is an administrative proceeding under KRS 61.880(2). "In statutory proceedings, the words of the statute are paramount." *Kenton Cnty. Bd. of Adjustment v. Meitzen*, 607 S.W.3d 586, 594 (Ky. 2020). These statutory proceedings are matters of "legislative grace," and the person seeking to initiate such a proceeding must "strictly comply" with the statutes that enable the proceeding. *See id.* at 593. Here, neither party disputes that the City issued a response with one page of responsive records sometime between September 4, 2022 and December 27, 2022.<sup>2</sup> Furthermore, the Appellant claims he submitted a written request on January 25, 2023, to the City, but he did not provide a copy of that request to this Office. Thus, the Office lacks jurisdiction to consider the Appellant's appeal related to his August 29, 2022, and January 25, 2023, requests.<sup>3</sup>

Regarding the two requests he allegedly sent on December 27, 2022, the Office cannot find that the City failed to timely respond to them. Under the Act, a public agency has five business days after receipt of a request to inspect records to fulfill it,

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<sup>2</sup> Neither the Appellant nor the City have provided a copy of the City's response to the August 29, 2022 request. It is not clear from this record if the City issued a written response, or if it only sent to the Appellant a copy of the text message without any further explanation. That is important, because under KRS 61.880(2)(a) a person seeking this Office's review must provide a copy of his original request and the agency's "written response denying inspection" of the requested record. If the City failed to issue a written response to the Appellant's request, and instead sent to him only a copy of the text message, then the Appellant would have provided all necessary documents to perfect his appeal under KRS 61.880(2)(a). But even if the Appellant did provide all documents necessary under KRS 61.880(2)(a), it is clear from his and the City's statements on appeal that the City provided the Appellant whatever it provided him more than 20 days before the Appellant initiated this appeal. Indeed, the Appellant admits he received the copy of the text message on November 25, 2023, three months before initiating this appeal. Under KRS 197.025(3), "all persons confined in a penal facility shall challenge any denial of an open record with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial." Accordingly, to the extent the Appellant has provided all necessary documents with respect to his first request, he has failed to do so within the 20-day period required under KRS 197.025(3). As such, the Office lacks jurisdiction to consider the City's response to his first request.

<sup>3</sup> The City states it has provided a flash drive containing "the remaining records requested" to both of his August 29, 2023 requests and the Appellant did not dispute this. Accordingly, any remaining dispute regarding his first request submitted on August 29, 2022, is moot. *See* 40 KAR 1:030 § 6 ("If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter").

or deny it and explain why. KRS 61.880(1). Here, the Appellant claims to have never received responses to the two December 27 requests. On appeal, the City states it did not respond to those requests because it did not receive them until it received the notice of appeal from this Office. This Office has consistently found that it is unable to resolve factual disputes, such as whether a public agency received a request for records. *See, e.g.*, 22-ORD-148; 22-ORD-125; 22-ORD-100; 22-ORD-051; 21-ORD-163. Thus, this Office cannot resolve the factual dispute of whether the City received these requests, or find that the City violated the Act when it did not respond to requests it claims it did not receive.

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).

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s/ Matthew Ray  
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Distributed to:

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