



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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**23-ORD-114**

May 30, 2023

In re: Alastair Couch/Fayette County Commonwealth's Attorney

**Summary:** This Office cannot find that the Fayette County Commonwealth's Attorney (the "Commonwealth's Attorney") violated the Open Records Act ("the Act") when she did not respond to a request she did not receive.

***Open Records Decision***

Inmate Alastair Couch ("Appellant") claims he submitted a request on March 22, 2023, to the Commonwealth's Attorney for a copy of all emails she sent or received related to the Appellant's criminal case. On April 27, 2023, having received no response from the Commonwealth's Attorney, the Appellant initiated this appeal.

On appeal, the Commonwealth's Attorney claims she did not receive the request until May 1, 2023, when she 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. KRS 61.880(1). Here, the Commonwealth's Attorney claims she did not receive the Appellant's request until May 1, 2023, when she received a copy of the request that was included with the notice of appeal. Thus, the statutory period for the Commonwealth's Attorney to issue a response to the Appellant's request did not begin until May 1, 2023. The Commonwealth Attorney then issued her response on May 3, 2023, within five business days of receiving the request.<sup>1</sup> The Office has routinely found it is unable to resolve factual disputes

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<sup>1</sup> In her response, the Commonwealth's Attorney denied the Appellant's request under KRS 61.878(h), which exempts from inspection "records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal

between a requester and a public agency, such as whether an agency received a request to inspect records. *See, e.g.*, 23-ORD-092; 23-ORD-071; 23-ORD-005; 22-ORD-216; 22-ORD-148; 22-ORD-125; 22-ORD-100; 22-ORD-051; 21-ORD-163. Therefore, this Office cannot find that the Commonwealth's Attorney 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**  
**Attorney General**

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

Alastair Couch #247390  
Kimberly Henderson Baird

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litigation” The Appellant has not contested the Commonwealth Attorney’s denial under KRS 61.878(h).