



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

23-ORD-115

May 30, 2023

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

Summary: This Office cannot find that the Franklin County Commonwealth's Attorney (the "Commonwealth's Attorney") violated the Open Records Act ("the Act") when he did not respond to a request he 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 copies of all emails he sent or received concerning 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 he did not receive the Appellant's request until he 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.¹ KRS 61.880(1). However, here, the Commonwealth's Attorney claims he did not receive the Appellant's request. Consequently, the statutory period to respond to the request did not begin until the Commonwealth's Attorney received a copy of the request included with notice of this appeal. The Office has routinely found it is unable to resolve factual disputes between a requester and

¹ The Commonwealth's Attorney explains that a special prosecutor was appointed and "prosecuted the case in its entirety." Accordingly, the Commonwealth's Attorney claims he does not possess any records responsive to the Appellant's request. Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist in the agency's custody or control. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). The Appellant has not attempted to make such a *prima facie* case here.

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.

Daniel Cameron
Attorney General

s/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Alastair Couch #247390
Larry Cleveland