



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-122

June 5, 2023

In re: Allen Wiley, III/Department of Public Advocacy

Summary: This Office cannot find that the Department of Public Advocacy (the “Department”) violated the Open Records Act (“the Act”) when it did not respond to a request it claims it did not receive.

Open Records Decision

Inmate Allen Wiley, III (“Appellant”) claims he submitted a request to inspect records to “the Dept. of Public Advocate [sic], Jefferson [sic]” on April 10, 2023. His request contained three subparts, all of which sought various records related to the jury that convicted him in 2008. Having received no response from the Department, the Appellant initiated this appeal.

Under KRS 61.880(1), upon receiving a request to inspect public records, 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.” Here, the Appellant claims he submitted a request to the Department on April 10, 2023, and that he did not receive a response to his request. The Department, on appeal, states it did not respond to his request because it did not receive the request until it received the notice of appeal issued by this Office.¹

¹ The Appellant used a preprinted form titled “Review of Denial to Inspect Pursuant to KRS 61.880(2).” The Office notes several inmates have begun using this preprinted form, which can be described as a checklist of several potential violations that could be alleged, and a blank for inmates to better describe the basis for their appeal. It is not clear where this form originated. Nowhere on this form did the Appellant identify the public agency whose decision he was appealing. Indeed, the only place where a public agency was identified was on the Appellant’s original request, where he identified the agency as “Dept. of Public Advocate [sic], Jefferson [sic].” This Office therefore sent notice of the

This Office has consistently found that it is unable to resolve factual disputes between a public agency and a requester, such as whether a public agency received a request under the Act. *See, e.g.*, 23-ORD-092; 22-ORD-201; 21-ORD-236; 21-ORD-163; 12-ORD-122; 08-ORD-066; 04-ORD-223; 03-ORD-172; OAG 89-81. Accordingly, this Office cannot find that the Department violated the Act for not responding to a request it claims never to have received.

A party aggrieved by this decision may appeal it by initiating an 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
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appeal to the Department of Public Advocacy. However, there exists a separate public agency in Jefferson County that serves as public defender for indigent criminal defendants—the Louisville–Jefferson County Public Defender Corporation, whose offices are located at 719 West Jefferson Street, Louisville, Kentucky 40202. From the Department of Public Advocacy’s response in this appeal, it is now clear the Appellant intended to claim the Louisville–Jefferson County Public Defender’s office is the agency that allegedly failed to respond to him. But given the Appellant’s request does not contain an address, or properly name the public agency to which he appears to have intended to send his request, it is possible that the Louisville–Jefferson County Public Defender’s office likewise never received the Appellant’s request. And because the Appellant failed to provide enough information to this Office to notify it of the correct public agency, the Louisville–Jefferson County Public Defender’s office did not receive notice of this appeal. The Office encourages inmate appellants to provide more information in their requests for appeal, as opposed to relying on a preprinted checklist that does not inform this Office of which public agency the inmate is claiming violated the Act. Moreover, the Office suggests the Appellant resend his request to the appropriate public agency, given the Office has now provided him with that agency’s mailing address.

Distributed to:

Allen Wiley, III #231525

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Melanie Lowe