



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-166

July 11, 2023

In re: Johnny Lee Cissell/Lee Adjustment Center

Summary: The Lee Adjustment Center (the “Center”) violated the Open Records Act (“the Act”) when its response failed to properly invoke KRS 61.872(5) to delay access to the requested record.

Open Records Decision

On May 31, 2023, Inmate Johnny Lee Cissell (“Appellant”) submitted a request to the Center for a complete copy of a report related to a “lost/damaged/stolen personal property” form he allegedly submitted. On June 12, 2023, having received no response from the Center, the Appellant initiated 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 the request and explain why. KRS 61.880(1). A public agency may also delay access to responsive records if such records are “in active use, storage, or not otherwise available.” KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must also notify the requester of the earliest date on which the records will be available and provide a detailed explanation for the cause of the delay. On appeal, the Center states it received the Appellant’s request on June 9, 2023, and issued a response on June 16, 2023.¹ Accordingly, its response was timely. However, in its response, the Center stated the requested “lost property claim [was] currently being processed” and “[a]dditional time is needed to complete this action.” As such, it was “not able to provide the requested documents/information to [the Appellant] within the normal

¹ The Center further explains that it took longer to receive the Appellant’s request because he had been transferred to a different correctional facility.

time frame.” Thus, the Center did not grant the request or deny it. Rather, it tried to invoke KRS 61.872(5) to delay the Appellant’s inspection of the records. But it did so improperly because it failed to provide the earliest date on which the record would be available to the Appellant or give a detailed explanation for the cause of further delay. As a result, the Center’s timely but deficient response violated the Act.²

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
Matthew Ray
Assistant Attorney General

² On June 20, 2023, the Center issued a supplemental response and now claims it “has no documentation/information to provide relative to” the Appellant’s request because the Center did not receive “any response back from the staff member assigned to investigate [the Appellant’s] property claim.” 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). Here, the Center’s previous statement that the “lost property claim is currently being processed” suggests that the requested record, *i.e.*, a report about the lost property grievance, was being prepared. It is not clear if no such report exists, or if the Center cannot obtain the report because its staff member did not respond to the Center’s internal call to search for records. If it is the latter, then clearly the Center’s search was inadequate when it failed to obtain an answer from the employee most likely to possess the record. But if the Center’s most recent explanation that the record does not exist is based on a claim that no one processed the Appellant’s lost property grievance, then that is an issue beyond the scope of this Office’s review for compliance with the Act. See, *e.g.*, 23-ORD-048 n.1 (noting the Office “cannot adjudicate ancillary legal disputes in the context of an appeal brought under KRS 61.880(2)”; 22-ORD-244 n.3 (same).

#258

Distributed to:

Johnny Lee Cissell #173741

Kristy Hale

Daniel Akers

G. Edward Henry, II