



COMMONWEALTH OF KENTUCKY  
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**23-ORD-177**

July 19, 2023

In re: Carl Poling/Northpoint Training Center

**Summary:** The Northpoint Training Center (the “Center”) violated the Open Records Act (“the Act”) when it failed to issue a response to a request within five business days of receiving the request.

***Open Records Decision***

On May 31, 2023, inmate Carl Poling (“Appellant”) submitted a request to the Center for copies of final reports related to two complaints about thefts he reported to the Center. On June 10, 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 6, 2023, and did not mail its response until June 19, 2023, when it granted the request and provided copies of the requested records to the Appellant. Thus, although the

Center ultimately granted the Appellant's request, it failed to notify him of its intent to do so within five business days.<sup>1</sup> Thus, the Center violated the Act.<sup>2</sup>

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

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Distributed to:

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Amy V. Barker  
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<sup>1</sup> The Center claims it meant to invoke KRS 61.872(5) because it required additional time to search for responsive records. But KRS 61.872(5) only applies when records are "in active use, in storage, or not otherwise available." Public agencies have five business days to decide whether to grant or deny a request. The expectation is that, within those five business days, it has concluded its search and determined whether to grant the request, deny it, or delay inspection of records *already located* because they are "in active use, storage, or not otherwise available." *Id.*

<sup>2</sup> The Center claims the appeal is moot since it provided the records to the Appellant. Under 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." But here, the Appellant requested a report the Center claims not to possess, *i.e.*, the August 5, 2022, report. Thus, the Center has not, in fact, provided all the records requested and the appeal is therefore not moot.