



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-187

July 26, 2023

In re: Kevin Franklin/Louisville-Jefferson County
Public Defender Corporation

Summary: The Louisville-Jefferson County Public Defender Corporation (“the Public Defender”) violated the Open Records Act (“the Act”) when it did not respond to a request to inspect records. The Public Defender did not violate the Act when it did not produce records exempt under KRS 61.878(1)(p).

Open Records Decision

On June 3, 2023, inmate Kevin Franklin, Jr (“Appellant”) submitted a request to the Public Defender for his file, his counsel’s work-product, and video of his trial. In response, on June 7, 2023, the Public Defender stated it was “in the process of determining whether [it] possess[es] any of the materials that [the Appellant] requested.” After receiving no further response from the Public Defender by June 22, 2023, 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 it and explain why. KRS 61.880(1). Or, if responsive records are “in active use, in storage or not otherwise available,” a public agency may delay access to them by stating the earliest date on which they will be available and a detailed explanation of the cause of the delay. KRS 61.872(5). Here, although the Public Defender responded to the request, it neither granted nor denied the request within five business days. Instead, it stated it would determine if it possessed any of the records the Appellant requested but did not specify the earliest date on which the records would be available, give a detailed

explanation for the cause of the delay, or otherwise respond to the Appellant until after this appeal was initiated. Accordingly, the Public Defender's response did not comply with KRS 61.872(5), and it therefore violated the Act.

On appeal, the Public Defender states that "the records and materials sought by [the Appellant] are part of the 'client and case files'" they maintain and are therefore exempt under KRS 61.878(1)(p). That section exempts from disclosure "[c]lient and case files maintained by the Department of Public Advocacy or any person or entity contracting with the Department of Public Advocacy for the provision of legal representation under KRS Chapter 31." KRS 61.878(1)(p). The Public Defender claims it contracts with the Department of Public Advocacy for the provision of legal representation under KRS Chapter 31 and that the records requested by the Appellant are part of its "clients and case files" exempted by the Act. The Office agrees.¹ Accordingly, the Public Defender did not violate the Act when it did not produce records exempt under KRS 61.878(1)(p).

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

¹ Although the Act exempts from the Appellant's inspection his own case file, there are other authorities that control a client's right of access to his own case file from his attorney. *See, e.g.*, SCR 3.130(1.16(d)). However, the Office's authority is to determine whether an agency has complied with the Act, KRS 61.880(2), not whether it complied with other statutes or rules, *see, e.g.*, 22-ORD-235 n.3.

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Distributed to:

Kevin Franklin, Jr. #284502

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