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**23-ORD-192**

August 1, 2023

In re: Simeon McKinnie/Covington Police Department

**Summary:** The Office cannot find that Covington Police Department (the “Department”) violated the Open Records Act (“the Act”) because this Office cannot resolve the factual dispute between the requester and the agency.

***Open Records Decision***

On May 10, 2023, inmate Simeon McKinnie (“Appellant”) submitted a request to the Department containing three subparts related to his criminal case.<sup>1</sup> On June 30, 2023, the Appellant initiated this appeal and stated the Department “fail[ed] to provide the requested records.”

When an agency receives a request under the Act, it “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.” KRS 61.880(1). Here, the Appellant claims he first submitted his request on May 10, and he resubmitted it on June 16, but as of June 30, 2023, he “has not received any of the records requested.” Noticeably, the Appellant does not state the Department failed to respond to his request.

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<sup>1</sup> First, the Appellant requested all witness statements made as part of the investigation into his case. Second, the Appellant requested all video and body worn camera footage related to his case. Third, the Appellant requested all reports, emails, and lab reports from officers or investigators related to his case, including any chain of custody reports.

On appeal, the Department claims it received the Appellant's request on May 12, 2023, and responded two business days later on May 16, 2023. The Department claims it granted the Appellant's request, but also informed him that it needed until June 1, 2023 to "retrieve the requested records . . . due to the anticipated volume of records."<sup>2</sup> The Department admits it was unable to meet its self-imposed June 1 deadline due to "unforeseen issues in locating any video/audio files related to the case." However, it provides proof that on June 5, 2023, it sent a second response to the Appellant informing him that it has located 55 pages of responsive records and it would provide the records upon receiving payment of a \$5.50 copying fee.<sup>3</sup>

This Office has routinely found that it is unable to resolve factual disputes between a requester and a public agency, such as, whether a requester received a response to his request. *See, e.g.*, 23-ORD-062; 22-ORD-024; 21-ORD-233; 21-ORD-163. Here, the Department claims it mailed a letter on June 5, 2023, making all responsive records available to the Appellant upon payment of a prescribed fee. Yet, the Appellant claims he "has not received any of the records requested." This Office is unable to resolve this factual dispute between the parties and cannot find that the Department violated the Act.

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

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<sup>2</sup> Neither the Appellant nor the Department included a copy of the May 16 response where the Department seemingly invoked KRS 61.872(5) to delay the Appellant's access to responsive records. Presumably, the Appellant did not receive the Department's May 16 response. If he did, then he failed to properly invoke the Office's jurisdiction because KRS 61.880(2)(a) states "the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection." The Office notes, however, in the Appellant's appeal, he states twice that he never received "requested records," as opposed to stating he never received a *response* to his request.

<sup>3</sup> Again, the Appellant did not provide a copy of the Department's final disposition of his request or make any mention of the fact the Department intended to charge him a copying fee. As mentioned previously, *any* requester seeking to invoke the Office's jurisdiction must provide a copy of both his request and the agency's response, if a response was issued. KRS 61.880(2)(a). But even more troubling here, it appears the Appellant's appeal is also time barred under KRS 197.025(3), which requires an *inmate* to appeal a public agency's denial within 20 days of the denial. The Appellant did not initiate this appeal until June 30, or 25 days after the Department's final disposition of the request. True, the Department's response granted the Appellant's request contingent on receiving payment of the copying fee, which KRS 61.872(3)(b) authorizes it to do. But the Department also redacted "dates of birth, social security numbers, phone numbers, and addresses of victims and witnesses" from the records under KRS 61.878(1)(a). Thus, the Department partially denied the request, which unquestionably brings its disposition of the Appellant's request into the ambit of KRS 197.025(3). Nevertheless, because it is unclear whether the Appellant received either of the Department's responses, and because the holding in this decision is that the Office cannot resolve factual disputes, the Office will not dismiss the appeal for lack of jurisdiction in the absence of clear evidence that it truly lacks jurisdiction.

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](mailto: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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