



COMMONWEALTH OF KENTUCKY
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23-ORD-220

August 16, 2023

In re: Marvin Pennington/Eastern Kentucky Correctional Complex

Summary: The Office is unable to find that the Eastern Kentucky Correctional Complex (the “Complex”) violated the Open Records Act (“the Act”) because the Office cannot resolve the factual dispute between the parties.

Open Records Decision

On June 13, 2023, inmate Marvin Pennington (“Appellant”) submitted three requests to the Complex.¹ On July 17, 2023, the Appellant initiated this appeal claiming he did not receive any response from the Complex.

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) (emphasis added). Here, the Appellant submitted three requests to the Complex on June 13, and claims he did not receive a response to any of them as of July 17. In contrast, the Complex states it received the Appellant’s three requests on June 20, 2023, and issued its responses to those requests on June 22 and 23. As proof, the Complex provides the three requests it received from the Appellant, which are stamped received on June 20, and its responses to those requests, two of which are dated June 22, and one of which is dated

¹ The Appellant’s first request sought a copy of a specific grievance form he filed, along with any related findings issued after October 7, 2022. The Appellant’s second request sought “a copy of the Inmate grievance committee scheduling form with [his] name on it” from October 10, 24, and 31, 2022. The Appellant’s third request sought “a copy of the ‘Dorm 5-RHU-Inmate request to see a grievance Aide’ from (10/12/22) till (11/1/22) with [his] name on it.”

June 23.² The Office has previously found that it is unable to resolve factual disputes between a requester and a public agency, such as whether a requester received an agency's response to his request. *See, e.g.*, 21-ORD-233. Thus, here, the Office cannot resolve the factual dispute between the parties or find that the Complex's responses were untimely in violation of 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 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:

Marvin Pennington #119935
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² Under KRS 197.025(3), "all persons confined in a penal facility shall challenge any denial of an open record [request] with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial." If the Appellant did receive the Complex's responses to his requests, his appeal would be time barred under KRS 197.025(3) because he did not initiate this appeal until more than 20 days after the responses were issued.