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**23-ORD-272**

October 10, 2023

In re: Kyle Thompson/Little Sandy Correctional Complex

**Summary:** The Little Sandy Correctional Complex (“the Complex”) violated the Open Records Act (“the Act”) when it denied an inmate’s request to inspect records without citing an exception authorizing its denial. However, the Complex did not violate the Act by refusing to email records to the records custodian of the correctional facility where the requester is currently incarcerated for his in-person inspection. The requester may resubmit his request by requesting to receive copies of the records by mail and prepaying the applicable fees.

***Open Records Decision***

Inmate Kyle Thompson (“Appellant”) submitted a request to the Complex to inspect “all grievances [he] filed at [the Complex] during May 17, 2022 through August 17, 2023.” The Appellant did not request to obtain copies of such records, but rather, asked the Complex to provide them “though email again.”<sup>1</sup> In a timely response, the Complex denied the Appellant’s request because “inspections are only available at the institution” and he is currently incarcerated at a different facility, which “prevents [him] from being able to inspect the records at” the Complex. However, the Complex’s response cited no exception to the Act or any other authority in support of its denial. The Complex advised the Appellant to submit another request if he wanted copies of the requested records. The Appellant then initiated this appeal,

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<sup>1</sup> Thus, on its face, the request appears to be seeking copies of public records by email. However, the Appellant did not provide the Complex with an email address where it could send the records. Moreover, on appeal, the Appellant clarifies that he wants the Complex to email the records to the official custodian of records at the Luther Lockett Correctional Complex so he may view the records on the official custodian’s computer and select the specific pages he wants to copy and retain.

claiming the Complex violated the Act when it did not cite “applicable law” to support its denial.

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). If an agency denies in whole or in part the inspection of any record, its response must include “a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.* A public agency’s response denying a request cannot be “limited and perfunctory.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). Here, the Complex’s response did not cite any exception to the Act, or any other authority, to support its denial. Rather, it stated only that it was “under no obligation to send the records to” Luther Luckett Correctional Complex (“LLCC”), where the Appellant is currently incarcerated. However, the Complex noted the Appellant could resubmit his request and ask the Complex to mail copies to him at LLCC. Because the Complex’s “limited and perfunctory” response cited no exception to the Act or other any authority to support its denial, it failed to comply with KRS 61.880(1).

However, the Complex is correct that the Act does not require it to email the requested records to the records custodian of a different institution to facilitate the Appellant’s in-person inspection of the records. KRS 61.872(3) provides two methods for a resident of the Commonwealth to exercise his right of inspection. First, under KRS 61.872(3)(a), a resident may inspect the public records “[d]uring the regular office hours of the public agency.” Second, a resident may inspect records “[b]y receiving copies of the public records from the public agency through the mail.” KRS 61.872(3)(b). If a resident elects to receive copies by mail, the public agency may demand prepayment of the associated copying and postage costs. *Id.*

Here, the Appellant is unable to exercise his right to in-person inspection of the records at the Complex because he is incarcerated at a different institution, and therefore, he cannot travel to the Complex during its normal business hours. As such, the only method of inspection available to him is to receive copies of the requested records by mail. KRS 61.872(3)(b). Moreover, on appeal, the Complex argues its denial was proper because “[a]n inmate incarcerated in a prison is subject to the rules and conditions of his confinement and not entitled to inspect records that are not located at his prison.” The Complex cited several of the Office’s previous opinions supporting its claim that an inmate’s right to inspect records in person is curtailed

due to the status of his confinement.<sup>2</sup> Thus, while the Complex is correct that the Appellant has no right under the Act to demand records be sent to another public agency to facilitate his in-person inspection, the Complex's initial response should have provided the Appellant with at least some of the legal authority it has provided on appeal. As a result, the Complex's deficient response violated the Act because it cited no exception or other authority in support of its denial. But the Act does not require the Complex to email the requested records to the records custodian at LLCC.<sup>3</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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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<sup>2</sup> The statutory right of a person to inspect records is restricted when he is confined to a correctional facility. *See, e.g.*, 15-ORD-006; 15-ORD-005; 12-ORD-082; 05-ORD-080; 95-ORD-105. While "all persons have the same standing to inspect and receive copies of public records, and are subject to the same obligations for receipt thereof," an inmate's freedom of movement may be restricted by the correctional facility. 95-ORD-105; *see also* 92-ORD-1136; OAG 91-129; OAG 89-86; OAG 82-394; OAG 80-641; OAG 79-582; OAG 79-546. As such, the Office has also previously found that "an inmate must accept the necessary consequences of his confinement, including policies relative to application for, and receipt of, public records." 95-ORD-105.

<sup>3</sup> The Appellant also claims he is entitled to the requested records under KRS 61.884 because the records make a specific reference to him. However, while KRS 61.884 permits a person to inspect records "in which he is mentioned by name," it does not specify the procedure by which a person must request records that mention him. Rather, as explained above, a person may only inspect records in person at the public agency or by receiving copies in the mail. KRS 61.872(3). Similarly, the Appellant's reliance on KRS 61.872(1) and KRS 61.872(2)(a) is also misplaced because those provisions state only that a resident has a right to inspect records, and do not provide the method by which he can exercise that right. Rather, KRS 61.872(3) establishes the two ways a person may exercise the right of inspection: in person at the public agency where the records are maintained, or receiving copies in the mail. Because of the nature of the Appellant's confinement, he cannot travel to the Complex, and thus, he has no choice but initiate his right of inspection under KRS 61.872(3)(b) and receive copies in the mail after paying the associated copying and mailing costs.

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Distributed to:

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