



COMMONWEALTH OF KENTUCKY
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23-ORD-276

October 19, 2023

In re: Ernest Merriweather/Kentucky State Police

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

Open Records Decision

Inmate Ernest Merriweather (“Appellant”) claims he mailed a request to inspect records to KSP on August 29, 2023.¹ The Appellant then initiated this appeal on September 18, 2023, claiming he never received a response from KSP.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “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.” Here, the Appellant claims he submitted a request to KSP on August 29, 2023, and that it did not respond to that request. However, KSP states on appeal that it received the Appellant’s request on September 1, 2023, and issued a timely response on September 8, 2023.² The Office has previously found that it is unable to resolve factual disputes

¹ The Appellant’s request was for “all documents” relating to his “criminal case,” including “updated results from database search of submitted DNA evidence lab results.”

² In its initial response to the Appellant, KSP provided 13 pages of responsive records but withheld the “DNA genetic information” data because it is exempt from inspection under KRS 17.175(4). That exception, which is incorporated into the Act by KRS 61.878(1)(l), states that “DNA identification records . . . shall be confidential and used only for law enforcement purposes.” The statute further states, “DNA identification records shall be exempt from the provisions of KRS 61.870 to 61.884.” *Id.* The Office has previously upheld an agency’s denial of an Open Records request seeking DNA identification information. *See, e.g.*, 05-ORD-251; 03-ORD-168.

between a requester and a public agency, such as whether a requester received an agency's response to his request. *See, e.g.*, 23-ORD-220. Similarly, here, the Office is unable to resolve the factual dispute between the Appellant and KSP or find that KSP 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 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
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s/ Matthew Ray
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Distributed to:

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