



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

23-ORD-283

October 24, 2023

In re: Leslie Lawson/Corbin Police Department

Summary: The Office cannot find that the Corbin Police Department (“the Department”) violated the Open Records Act (“the Act”) when it did not respond to a request to inspect records it claims it did not receive.

Open Records Decision

Inmate Leslie Lawson (“Appellant”) claims he submitted a request to the Department on May 10, 2023, to obtain copies of records related to his criminal case. He further claims he has received no response to his request. Accordingly, he initiated this appeal.

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.” KRS 61.880(1). On appeal, the Department claims it never received the Appellant’s request.¹ The Office has routinely found it is unable to resolve factual disputes between the parties to an appeal under KRS 61.880(2)(a), including disputes about whether the public agency received the request. *See, e.g.*, 23-ORD-071; 23-ORD-005; 22-ORD-216; 22-ORD-148;

¹ The Office notes the Appellant addressed his request directly to an officer of the Department, not to the Department’s official custodian of records. If the officer actually received the request, then he was required to forward the request to the Department’s official custodian or to personally respond to the request and notify the requester of the contact information for the Department’s official custodian. *See* KRS 61.872(4). But there is no evidence in the record that the officer did receive the Appellant’s request, and the Department claims to have never received it.

22-ORD-125; 21-ORD-163. Accordingly, the Office cannot find that the Department violated the Act when it did not respond to a request it claims it did not receive.²

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/ Marc Manley
Marc Manley
Assistant Attorney General

#427

Distributed to:

Leslie Lawson #122950
Rusty Hendrick

² On appeal, the Department also states the requested records are “part of an ongoing investigation.” However, a response denying a request to inspect records must cite the exception authorizing the denial and explain how the exception applies to the records withheld. KRS 61.880(1). A law enforcement agency does not comply with KRS 61.880(1) by simply stating there is an “ongoing investigation.” In 21-ORD-098, the Office explained the differences between two exceptions applicable to law enforcement records collected as part of an ongoing investigation—KRS 61.878(1)(h) and KRS 17.150(2)—and further explained the level of detail law enforcement agencies are required to provide to explain how each exception applies to records withheld under either exception. However, because the Department claims to have not received the Appellant’s request, the issue of whether its response denying the Appellant’s request is not properly before the Office. The Office notes, however, that in his October 2 reply objecting to the Department’s claim that it did not receive his request, the Appellant attached a renewed version of his request. The Office forwarded that renewed request to the Department. Then, on October 8, 2023, the Appellant attempted to initiate a “second appeal” by providing the Office with a copy of his renewed request seeking the same records. The Office declines to consider the Appellant’s “second appeal” because five business days had not elapsed between the date of his renewed request and his attempt to appeal the Department’s alleged failure to respond to it. As such, his “second appeal” is premature. *See, e.g.*, 20-ORD-075.