



# COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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**24-ORD-006**

January 16, 2024

In re: Reginald Grider/Kentucky State Penitentiary

**Summary:** The Kentucky State Penitentiary (“Penitentiary”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), by delaying its final response beyond the five-day period under KRS 61.880(1) without invoking KRS 61.872(5), explaining the cause for delay, or providing the earliest date when the records would be available. The Penitentiary did not violate the Act when it denied a request for photos of evidence that would pose a security threat to the Penitentiary if released. KRS 197.025(1).

## ***Open Records Decision***

On October 30, 2023, inmate Reginald Grider (“Appellant”) submitted a request to the Penitentiary seeking audio recordings of adjustment hearing proceedings conducted in connection with two specific disciplinary reports, the first part of both disciplinary reports, and color photographs of the evidence attached to the reports. On December 1, 2023, the Penitentiary denied the Appellant’s request for audio recordings because the equipment on which the audio is saved was malfunctioning and directed the Appellant to “resubmit [his] request in a few weeks.” The Penitentiary also denied the Appellant’s request for color photos of evidence under KRS 197.025(1) and KRS 61.878(1)(l) because those photos constitute a security risk. The Penitentiary granted the Appellant’s request for the first part of the two disciplinary reports. This appeal followed.

Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it. This time may be extended under KRS 61.872(5) when records are “in active use, in storage or not otherwise available,” if the agency gives “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record will be available for inspection.” An agency may not impose a lengthy delay under KRS 61.872(5) without

explaining why the delay is necessary. *See, e.g.,* 21-ORD-045. The burden of proof rests with the public agency to sustain its actions. KRS 61.880(2)(c).

Here, the Appellant's request was dated October 30, 2023, and a note on the request indicates it was received by the Penitentiary's open records office on November 1, 2023. However, the Penitentiary's response was dated December 1, 2023. On appeal, the Penitentiary claims the request was dated November 9, 2023, and was received by the Penitentiary on November 13, 2023. The Penitentiary states it "notif[ied] [the Appellant] that additional time was needed [and] a timely response was sent to [the Appellant] on December 1, 2023."

Under KRS 61.880(4), a person who "feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . delay past the five (5) day period described in" KRS 61.880(1), may appeal to this Office as if the request had been denied. Here, while it is unclear when the Penitentiary received the request, the Penitentiary admits that it did not determine whether to grant or deny the request until December 1, 2023. Accordingly, the Penitentiary has not carried its burden of proving that it issued a timely response in compliance with the Act.<sup>1</sup>

When the Penitentiary responded to the request on December 1, 2023, it informed the Appellant that, because its audio recorder was being repaired, he would need to resubmit his request "in a few weeks." Although the Penitentiary informed the Appellant that the records were currently unavailable, it failed to invoke KRS 61.872(5) or provide the earliest date by which the records would be available. Accordingly, the Penitentiary violated the Act.

Finally, the Penitentiary denied the Appellant's request for "color photos of evidence" as exempt under KRS 197.025(1) because disclosure of those records would

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<sup>1</sup> The Penitentiary only asserts that it notified the Appellant "that additional time was needed." It has not provided the Office with a copy of this correspondence, and thus, there is no proof in this record that the Penitentiary issued any response to this request until December 1, 2023. The Appellant also claims the Penitentiary routinely delays access to records he requests, and he provides as an example a memorandum from the Penitentiary relating to two other requests he submitted on November 9, 2023, in which the Penitentiary claimed it needed additional time because of "a family emergency that came up and the Thanksgiving holiday break." Whether the Penitentiary properly invoked KRS 61.872(5) in response to the Appellant's two requests submitted on November 9, 2023, is not properly before the Office because the Appellant has not provided copies of those requests. Simply put, the request at issue here was dated October 30, 2023, was noted as having been received on November 1, 2023, yet the Penitentiary provides no proof it issued a response before December 1, 2023, almost a month later.

constitute a security threat. Under KRS 197.025(1), “no person shall have access to any records if the disclosure is deemed by the commissioner of the [Department of Corrections] or his designee to constitute a threat to the security of the . . . correctional staff [or] the institution.” KRS 197.025(1) is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection public records the disclosure of which is prohibited by enactment of the General Assembly. Specifically, the Penitentiary states that it does not provide photographs of weapons because “they could be used as templates to make more weapons like them.”

This Office historically has deferred to the judgment of a correctional facility in determining whether the release of certain records would constitute a security threat. In particular, this Office has previously upheld the denial of photographs of weapons under KRS 197.025(1). *See, e.g.*, 17-ORD-229 (affirming the denial of copies of a photograph of knife used in a stabbing would be a security risk because it could potentially be shared with other inmates). Accordingly, the Penitentiary did not violate the Act when it withheld “color photos of evidence” that, if released, would pose a security risk under KRS 197.025(1).

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).

**Russell Coleman**  
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