



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-001

January 12, 2024

In re: Jerry Shrecker/City of Owensboro

Summary: The Office cannot find that the City of Owensboro (“the City”) violated the Open Records Act (“the Act”) when it failed to respond to a request it did not receive as a result of a spam email filter.

Open Records Decision

On November 8, 2023, Jerry Shrecker (“the Appellant”) emailed a request to the City seeking copies of various policies and procedures related to the Owensboro Police Department. Having received no response to his request by November 29, 2023, the Appellant initiated this appeal.

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.” On appeal, the City explains it did not respond to the Appellant’s request because the spam filter for the email account to which the Appellant submitted his request rejected the Appellant’s email.¹ Accordingly, the City claims not to have received the request. This Office has previously found that the interception of requests by spam filters or other anti-phishing programs that prevent requests from reaching the recipient is tantamount to the agency not receiving the request. *See, e.g.*, 23-ORD-182; 23-ORD-153; 23-ORD-064. Accordingly, the Office cannot find that the City violated the Act when it did not receive the request.²

¹ In support of its claim that its anti-phishing program blocked the Appellant’s request, the City provides a photograph of its software showing that the email the Appellant sent on November 8, 2023, was blocked. The Appellant submitted another request on December 4, 2023, which was approved by the software and received by the City.

² The Appellant mailed a copy of his appeal to both the City and the Office, but the Office did not receive the appeal until December 11, 2023. Before the Office processed the appeal, the City responded to his request and provided the Appellant with responsive documents. The Appellant also claims on appeal that the City has failed to post in a prominent location on its website its policies and procedures,

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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.

Russell Coleman
Attorney General

/s/ Marc Manley
Marc Manley
Assistant Attorney General

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Distribution:

Jerry W. Shrecker
Mark Pfeifer

as well as the contact information for its official records custodian. *See* KRS 61.876(2). However, that issue is not properly before the Office. In 22-ORD-165, the Office held that a person must first submit a complaint to the public agency about its alleged failure to post on its website the materials required under KRS 61.876(2). That is because, under KRS 61.880(2)(a) and KRS 61.880(4), the Office only has jurisdiction to review a person's request and the agency's response, or lack thereof, and then determine whether the agency has complied with the Act. Because the Appellant's request to the City made no mention of its alleged failure to comply with KRS 61.876(2), the City had no opportunity to respond to the allegation before the appeal was initiated. A person does not invoke the Office's jurisdiction merely by submitting a complaint that an agency is not complying with certain requirements of the Act.