



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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24-ORD-004

January 16, 2024

In re: Davon Burke/Kenton County Attorney's Office

Summary: Because a person seeking the Attorney General's review of a denial of a request to inspect records must provide "a copy of the written request and a copy of the written response denying inspection," KRS 61.880(2)(a), the Office lacks jurisdiction to review a public agency's denial where the written request provided is not the same one to which the denial pertains. The Office cannot resolve a factual dispute as to whether a public agency received a particular request.

Open Records Decision

Inmate Davon Burke ("Appellant") claims he submitted a request for records to the Kenton County Attorney's Office ("the agency"), which was denied. The request he has provided for the Office's review is dated November 16, 2023, and contains four subparts. The agency's denial is dated November 17, 2023, and appears to be responsive to an earlier request he submitted, which was undated. That request sought a visitation video from February 16, 2023, and "any other visitation video." In response to this appeal, the agency asserts the Appellant did not include with his appeal a copy of the undated request to which its November 17 denial pertains. The agency further claims neither it "nor the records custodian for the fiscal court has received" the November 16 request the Appellant provided with his appeal. Accordingly, the agency argues this appeal should be dismissed.

Under KRS 61.880(2)(a), "[i]f a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection." If the written request provided is not the same one to which the denial pertains, then the requester has failed to comply with KRS 61.880(2)(a) and properly invoke the Office's jurisdiction. *See* 22-ORD-215 n.2. Furthermore, the Office is unable to resolve factual disputes between a requester and a public agency, including whether the agency received a particular request. *See, e.g.,* 21-ORD-163. Accordingly, the appeal is dismissed.

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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

Davon Burke, #162305
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