



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-043

February 20, 2024

In re: Ben Richard/Justice and Public Safety Cabinet

Summary: The Office lacks jurisdiction to consider the Cabinet’s denial of a request to inspect records made under the Open Records Act (“the Act”) because the inmate requester failed to appeal the denial within 20 days, as required by KRS 197.025(3).

Open Records Decision

Inmate Ben Richard (“Appellant”) has submitted two requests to the Cabinet seeking a copy of the Cabinet’s “classification manual.” He submitted his first request on November 17, 2023. On November 28, 2023, the Cabinet denied his request under KRS 61.878(1)(l) and KRS 197.025(2) because the record does not contain a specific reference to the Appellant. The Appellant submitted his second request, which is the subject of this appeal, on January 2, 2024. On January 10, 2023, the Cabinet denied this request for the same reasons it denied his earlier request. The Appellant then attempted to initiate this appeal and seek the Office’s review of the Cabinet’s January 10, 2024, denial.

Although the Act does not, itself, require residents of the Commonwealth to appeal an agency’s denial of a request to inspect records within a specific timeframe, the General Assembly has established a deadline by which an inmate must seek review of a request that has been denied. Under KRS 197.025(3), “all persons confined in a penal facility shall challenge any denial of an open record [request] with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial.” Because the General Assembly has specifically limited the time in which an inmate may appeal the denial of a request to inspect records, the Office has routinely held that an inmate cannot circumvent the 20-day period to seek the Office’s review under KRS 197.025(3) by

submitting a second request for the same record to the agency and obtaining the same denial. *See, e.g.*, 20-ORD-046; 18-ORD-015; 15-ORD-0027.

Here, the Cabinet provides proof it denied an identical request by the Appellant for the requested policy on November 28, 2023, well more than 20 days before the Appellant initiated this appeal. The Appellant cannot renew the 20-day period to appeal the Cabinet's denial by submitting a duplicative request and obtaining a more recent, but nevertheless duplicative, denial. The Appellant's appeal is therefore dismissed as time barred under KRS 197.025(3).

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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

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