



COMMONWEALTH OF KENTUCKY  
**OFFICE OF THE ATTORNEY GENERAL**

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**25-ORD-190**

July 22, 2025

In re: Ben Richard/Lee Adjustment Center

**Summary:** The Lee Adjustment Center (“the Center”) did not violate the Open Records Act (“the Act”) when it made the requested records available for inspection and when it declined to reproduce the records in a particular format.

***Open Records Decision***

Inmate Ben Richard (“Appellant”) submitted a request to the Center seeking to inspect a “USB/flashdrive to identify the ‘titles’” of a particular document and folder contained therein and asking that two folders be saved to a CD. In response, the Center advised that the Appellant could schedule an appointment to view the “USB/flashdrive,” but it declined to save any materials to a CD on his behalf. This appeal followed.

Under KRS 61.880(1), a public agency has five business days to grant or deny a request for public records. Here, the Center explains that, regarding the first portion of the request, the Center scheduled an appointment for the Appellant to inspect the identified “USB/flashdrive” but the Appellant “failed to attend that meeting.” Regarding requests that a requester schedule an appointment to inspect records, the Office has found that a public agency does not violate the Act when it merely attempts to plan ahead for the requester’s visit and have the responsive records readily available for his inspection. *See, e.g., 24-ORD-044; 20-ORD-013.* To the extent the Appellant claims he was not able to inspect the identified records, the Center claims he did not attend the meeting it had scheduled for him to do so. Thus, a factual dispute exists between the parties regarding whether the requested records were actually made available to the Appellant.

The Office has regularly 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 requested records were actually made available to the requester. *See, e.g.*, 25-ORD-068 (holding the Office cannot resolve a dispute regarding whether records were made available for inspection and whether the appellant had an opportunity to inspect the records at a scheduled meeting). Similarly, here, the Office cannot resolve the factual dispute between the parties as to whether the Center made the records available to the Appellant because the Office cannot make a factual finding about what occurred on the day of the scheduled inspection. As a result, the Office cannot find that the Center violated the Act.

Regarding the Appellant's request that the Center convert particular documents on the "USB/flashdrive," the Act does not require a public agency to create a record to satisfy a request. *See, e.g.*, 25-ORD-152; 24-ORD-278; 24-ORD-229; 16-ORD-052. Likewise, here, the Center was not required to produce the files in the "USB/flashdrive" to the Appellant in a format in which they do not currently exist.<sup>1</sup>

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**  
**Attorney General**

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

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<sup>1</sup> On appeal, the Center argues that the "USB/flashdrive," which is currently in its possession because Department of Corrections policies do not allow inmates to have data storage devices in their possession, is not a public record under KRS 61.870(2). According to the Center, it is a public agency under KRS 61.870(1)(h), and the definition of "public record" does not include "records owned or maintained by or for a body referred to in subsection (1)(h) of [KRS 61.870] that are not related to functions, activities, programs, or operations funded by state or local authority." Although resolving this issue is not necessary to fully resolve the Appellant's appeal, the Office doubts that the Center's possession of inmate property that occurs because it oversees those inmates' incarceration is not "related to functions . . . funded by state or local authority."

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Distributed to:

Ben Richard #199197

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