



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-195

July 25, 2025

In re: Mark Dungan/McCreary County Sheriff's Office

Summary: The McCreary County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act"), when it failed to respond to a request for records within five business days.

Open Records Decision

On April 28, 2025, inmate Mark Dungan ("Appellant") submitted a request to the Sheriff's Office for a copy of "any policy memo or any other form of document adopted or used in you[r] department concerning the use of Body Cameras by Deputy Sheriffs." The appellant also requested a copy "of any document held by [the Sheriff's Office] which reflects whether or not [a specific Deputy Sheriff] used a body camera while employed." On June 16, 2025, having not received any response from the Sheriff's Office, 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." Here, the Appellant submitted a request to the Sheriff's Office on April 28, 2025, but had not received a response as of June 16, 2025, nearly two months after the submission of his request. On appeal, the Sheriff's Office does not assert it issued any response to the request prior to June 23, 2025.¹ Accordingly, the Sheriff's Office violated the Act when it failed to respond to a request for records within five business days.

¹ On appeal, the Sheriff's Office provided a response dated June 23, 2025. In its June 23 response, the Sheriff's Office denied the Appellant's request because it "is not in possession of the policy and procedure manual for the former sheriff" and that the specific Sheriff's Deputy "has never been employed by the current sheriff." Once a public agency states affirmatively that a record does not exist,

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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the burden shifts to the requester to present a *prima facie* case that the requested record does or should exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005).