



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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25-ORD-231

August 25, 2025

In re: Kentucky Innocence Project/Menifee County Sheriff's Office

Summary: In appeals brought under the Open Records Act, the Office of the Attorney General is authorized to issue “a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.” Accordingly, the Office declines to render a decision interpreting an order of the Menifee Circuit Court.

Open Records Decision

On May 9, 2025, Mark E. Stallings, on behalf of the Kentucky Innocence Project (“Appellant”), submitted a request to the Sheriff’s Office seeking “any and all documentation and information . . . related to the investigation of” a specific individual. The Appellant further narrowed his request by identifying the convicted individual, the investigating detective, and the case number of the criminal proceeding. Having received no response by July 7, 2025, the Appellant called the Sheriff’s Office, who stated they had not received the request and asked that it be resubmitted.¹ The Appellant resubmitted its request by email on July 7, 2025,² and then by mail on July 15, 2025. In a timely response to the July 15 request, the

¹ The Appellant has not challenged the Sheriff’s Office lack of response to the initial request. But even if it had, it has represented that the Sheriff’s Office claims it did not receive the request, and the Office has consistently found it is unable to resolve factual disputes between a requester and a public agency, such as whether an agency received a request to inspect records. *See, e.g.*, 25-ORD-027; 24-ORD-184.

² Regarding its July 7 email request, the Appellant states it received a verbal denial rather than a written denial. A verbal response does not satisfy the requirements of the Act. *See* KRS 61.880(1) (requiring a response “in writing”). However, to initiate an appeal, an appellant must provide the Office with “a copy of the written request and a copy of the written response denying inspection.” KRS 61.880(2)(a). “If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request.” *Id.* Here, the Appellant provided only a copy of its email stating, “As we discussed I’m forwarding this to you via email. Thank you for your attention.” The request apparently being forwarded was not provided to the Office, meaning the Office lacks jurisdiction to consider the Sheriff’s Office’s alleged verbal response to the July 7 email request.

Sheriff's Office stated the Appellant "would need a court order to get the files." This appeal followed.

Upon receiving a request to inspect public records, a public agency must determine within five business days whether to grant the request or deny it. KRS 61.880(1). If the agency chooses to deny the request, it "shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." *Id.*

Here, the Sheriff's Office relies on a protective order that was entered in the relevant criminal proceeding. On appeal, the Sheriff's Office explains that, "[c]onsidering the sensitive nature of the records being sought and in mindfulness of the Court's previous order, [it] denied the request." For its part, the Appellant argues that the Sheriff's Office's reliance on the protective order is insufficient.

The Sheriff's Office has provided the Office with a copy of that protective order, which states that "Defense counsel may show the information to their client but may not provide extra copies to them nor make additional copies without further order of this Court."³ The Sheriff's Office maintains that the order prohibits it from providing the requested materials without leave of the Court. The Appellant disagrees. Thus, under the Sheriff's Office's view, the order prohibits it from making copies of the requested records and it was, therefore, required to deny the Appellant's request. Under the Appellant's view, the protective order is not controlling, and the records must be produced unless they are exempted by an applicable exemption to the Act.

The Office has previously declined to substitute its judgment for that of Kentucky's circuit courts. *See, e.g.*, 24-ORD-128 (noting "the Office has previously declined to render a decision on the merits where the issues presented on appeal are also currently before a court of competent jurisdiction"); 23-ORD-129 (same); 17-ORD-096 (finding "[i]t is clear from KRS 61.882 that the legislature has vested the circuit courts with authority overriding that of the Attorney General in determining open records questions"). Here, resolving the dispute between the parties would require the Office to determine the scope of the Menifee Circuit Court's protective order. This the General Assembly has not authorized the Office to do. Rather, the Office's authority in an appeal brought pursuant to the Act is limited to "stating whether the agency violated provisions of KRS 61.870 to 61.884." KRS 61.880(2)(a).

³ The Commonwealth, in that case, had "requested that all discovery provided to the Defendants' counsel not to [sic] be duplicated or provided to any other individual or the Defendant."

As such, the Office declines to interpret the Menifee Circuit Court's protective order. That question is better answered by the Menifee Circuit Court.

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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