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25-ORD-376

November 26, 2025

In re: John Scott/Department of Corrections

Summary: The Department of Corrections (“the Department”) violated the Open Records Act (“the Act”) when it failed to respond to a portion of a request for records and when it did not conduct an adequate search for records.

Open Records Decision

On September 17, 2025, John Scott (“Appellant”) submitted a request to the Department seeking records related to an internal affairs investigation at a particular correctional facility involving him. In relevant part, the Appellant requested interview records from the internal affairs case file. On September 24, 2025, the Department invoked KRS 61.872(5) and advised that it would issue its final response to the request on October 8, 2025. On that date, the Department issued its response providing responsive records with redactions.

Subsequently, on October 9, 2025, the Appellant submitted a second request, seeking eight additional categories of records related to the investigation. The Department issued its final response to this request on October 16, 2025, detailing the records it was producing, the records it was withholding pursuant to relevant exemptions, and the requests for which it had no responsive records.

On October 28, 2025, the Appellant initiated this appeal, alleging that he had not been provided with all responsive audio recordings.¹

¹ The Appellant does not challenge any of the Department’s redactions or denials of records, nor does he challenge its invocation of KRS 61.872(5).

On appeal, the Department states that, upon notice of this appeal, it conducted a subsequent search for records and identified 30 audio recordings responsive to the request. The Department states that it will provide redacted copies of the records and so the appeal is now moot. Under 40 KAR 1:030 § 6, “[i]f the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.” However, mootness only applies when the agency provides the requested records in their entirety, not redacted copies. *See, e.g.,* 25-ORD-204 n.2; 23-ORD-313 n.2; 20-ORD-078; 12-ORD-046. Because the Department states that it will produce redacted audio recordings, this appeal is not moot.²

When a public agency receives a request to inspect records, that agency must decide within five business days “whether to comply with the request” and notify the requester “of its decision.” KRS 61.880(1). A public agency cannot simply ignore portions of a request. *See, e.g.,* 21-ORD-090. If the requested records exist and an exemption applies that allows the agency to deny inspection, the agency must cite the exemption and explain how it applies. Conversely, if the records do not exist, then the agency must affirmatively state that such records do not exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Department initially failed to respond to the Appellant’s request for audio recordings. Moreover, upon receiving notice of this appeal, the Department conducted an additional search and located 30 audio records responsive to the request. When a subsequent search reveals additional records not previously found, the agency’s initial search “was clearly insufficient to locate all responsive records.” 25-ORD-165; 21-ORD-242, 21-ORD-178. Therefore, the Department violated the Act when it initially failed to respond to the Appellant’s request for audio recordings and when it conducted an inadequate initial search for records.

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.

² The Department states that it will complete its review and redaction of the audio records on December 4, 2025.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
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Assistant Attorney General

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Distributed to:

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