



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-391

December 8, 2025

In re: Tim Hutchins/Nelson County Sheriff's Office

**Summary:** The Office cannot find that the Nelson County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act") because the Office cannot resolve the factual dispute between the parties concerning whether the Sheriff's Office has provided all records in its possession. The Office cannot find that records were improperly deleted due to insufficient information.

### *Open Records Decision*

This appeal concerns two requests submitted to the Sheriff's Office by Nelson County Judge/Executive Tim Hutchins ("the Appellant"). On September 30, 2025, the Appellant requested copies of "any notes, documents, emails, text messages, or other relevant documents" that were sent to or from "or residing in the email accounts, cell phones, or computers of" three named individuals during fiscal years 2022–2023 through 2025–2026, which contain any of 44 keywords. In an undated response, the Sheriff's Office stated that no responsive "notes" existed; no "documents" were available except "criminal cases," not all of which "are closed"; "[e]mails are maintained by the county"; "[t]he previous emails were shut down and [the Sheriff does] not have access to the account any longer"; and "if texts on personal phones are purely personal and not used for official duties, they are not open records."

On October 1, 2025, the Appellant requested, for the same fiscal years, all "[c]redit, debit, and/or fuel card statements," "[a]ccount ledgers," "bank statements," "[f]leet and maintenance records for all vehicles," "check(s) written to any member of [the] Sheriff's Office," "[t]imesheets or any relevant timekeeping documentation for payroll payments to" the same three individuals, and "[a]ny contract entered into by the Nelson County Sheriff's Department with any individual, business, company, corporation, or like institution." In response, the Sheriff's Office provided several responsive records, but stated "[t]he County Judge Office has all timecards" and "[t]his request needs to be completed by them"; "[m]aintenance records are handled

by Rhonda Fenwick through purchase orders approved by the Judge Executive”; and “2022 Fee Ledger is locked and cannot be opened.”

The Appellant initiated this appeal on October 30, 2025, complaining that the Sheriff’s Office, in response to his September 30 request, had “failed to remit any relevant information from cases that are either pending or closed.” The Appellant further alleged “many [records] were missing” from the response to his October 1 request. However, in response to this appeal, the Sheriff’s Office claims “all items were provided to [the Appellant] in 2 different flash drives,” with the exception of items “that may have been deleted from emails.” The Office is unable to resolve factual disputes between a requester and a public agency, such as whether all responsive records in the agency’s possession have been provided. *See, e.g.*, 21-ORD-099 n.2.

As to the emails to which the Sheriff’s Office claims it no longer has access, the difficulty apparently arises from a change of internet domain, which made the former email accounts unavailable.<sup>1</sup> A public agency “is responsible only for those records within its own custody or control.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)). Thus, when emails are deleted in accordance with the applicable records retention schedule, an agency need not take extraordinary measures to recover them. *See, e.g.*, 17-ORD-183; 14-ORD-050. Here, the Appellant claims the Sheriff’s Office failed to comply with the Local Governments General Records Retention Schedule, which requires official correspondence to be retained permanently and routine correspondence to be retained for two years.<sup>2</sup> But it is not clear from the record when the domain change occurred, whether any of the unavailable emails are less than two years old, or whether any of the emails requested by the Appellant constitute “official correspondence.” Accordingly, it cannot be determined whether any of the emails no longer within the custody or control of the Sheriff’s Office were improperly deleted. Therefore, the Office cannot find that the Sheriff’s Office violated the Act.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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

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<sup>1</sup> The Sheriff’s Office states that a contractor who works “through Nelson County Government” may have access to those records.

<sup>2</sup> *See* Local Governments General Records Retention Schedule, “Official Correspondence,” Series L4954, and “Routine Correspondence,” Series L4955, available at <https://kdla.ky.gov/records/RetentionSchedules/Documents/Local%20Records%20Schedules/LocalGovernmentGeneralRecordsRetentionSchedule.pdf> (last accessed Dec. 8, 2025).

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/ James M. Herrick  
James M. Herrick  
Assistant Attorney General

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Distributed to:

Hon. Tim Hutchins  
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