



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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26-ORD-053

February 20, 2026

In re: John Scott/Department of Corrections

Summary: The Office cannot find that the Department of Corrections (“the Department”) violated the Open Records Act (“the Act”) where the Department established by clear and convincing evidence that a request it denied posed an unreasonable burden under KRS 61.872(6).

Open Records Decision

John Scott (“Appellant”) submitted a request to the Department for “copies of all emails sent or received by [a specific person] at Southeast State Correctional Complex, during the period of June 1, 2025[,] through January 12, 2026.” The Department denied the Appellant’s request under KRS 61.872(6) because it placed an unreasonable burden upon the Department in producing the responsive records. This appeal followed.

Under KRS 61.872(6), “[i]f the application places an unreasonable burden in producing public records . . . the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.” “When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction.” 22-ORD-221. Of these, the number of records implicated “is the most important factor to be considered.” 22-ORD-182.

In 25-ORD-322, the Office found an agency had shown an unreasonable burden by clear and convincing evidence when its search resulted in 11,482 emails and attachments, which required review for “exemptions under personal privacy and [the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g], and potentially

attorney-client privilege or preliminary drafts, notes, correspondence, or recommendations or memoranda.”

Here, the Department asserts that its search “yielded approximately 16,450 e-mails that will require close review to determine responsiveness before the Department can begin performing necessary redactions of any sensitive information, such as personal information, including medical, that is exempt under KRS 61.878(1)(a) and the Health Insurance Portability and Accountability Act of 1996, or information the disclosure of which would pose a security threat under KRS 197.025(1), incorporated into the Open Records Act by KRS 61.878(1)(k).”

Consequently, here, the burden on the Department is similar to the burden found to be unreasonable in 25-ORD-322. Accordingly, the Department has established by clear and convincing evidence that it properly denied the request under KRS 61.872(6). As a result, the Office cannot find that the Department violated the Act.

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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