



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-284

June 23, 2026

In re: Theodore Roberts/Kentucky Higher Education Assistance Authority

Summary: The Office cannot find that the Kentucky Higher Education Assistance Authority (“KHEAA”) violated the Open Records Act (“the Act”) when its timely responses failed to be delivered to the Appellant.

Open Records Decision

On May 14, 2026, Theodore Roberts (“Appellant”) submitted a request to KHEAA seeking nine categories of records related to KEES¹ funding eligibility. On May 22, 2026, having received no response from KHEAA, 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.” On appeal, KHEAA claims that it attempted to respond to the Appellant on May 19 and 20 but that it received a “delivery failure” notice when utilizing the requester’s email address.” As support, KHEAA provides copies of its attempted responses² and the delivery failure notice, which it did not receive until May 25.

The Office has previously found that the interception of emailed requests by spam filters or anti-phishing programs that prevent them from reaching the recipient is tantamount to the agency not receiving the request. *See, e.g.,* 25-ORD-087; 24-ORD-001; 23-ORD-182; 23-ORD-153; 23-ORD-064. The Office finds the present appeal to be analogous. Here, KHEAA explains that it twice attempted to provide

¹ Kentucky Education Excellence Scholarship.

² Those responses were directed to the requestor’s email address.

responsive records to the Appellant using the email address with which he submitted his request. Those responses were issued within five business days of its receipt of the request. Importantly, KHEAA did not receive the message delivery failure notice until May 25. Therefore, the Office concludes that KHEAA did not violate the Act when it timely responded to the Appellant's request.³

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:

Theodore Roberts, Appellant
Jo Carole Ellis, Kentucky Higher Education Assistance Authority, Executive Director
Miles Justice, Kentucky Higher Education Assistance Authority, General Counsel

³ The Office notes that whether KHEAA was aware that its response was not delivered to the Appellant is, ultimately, a factual dispute the Office cannot resolve. *See, e.g.*, 23-ORD-276.