



COMMONWEALTH OF KENTUCKY  
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20-ORD-083

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In re: James Harrison/Cabinet for Health and Family Services

**Summary:** The Cabinet for Health and Family Services (“CHFS”) failed to issue a timely written response to a request for records under the Open Records Act (“Act”) and failed to provide responsive records in its possession.

*Open Records Decision*

On April 13, 2020, James Harrison (“Appellant”) submitted an open records request to CHFS seeking a copy of “guidelines and any other directive records setting forth the procedures for the Kentucky Department of Corrections, (DOC), especially those applicable to the Green River Correctional Complex [(“the Complex”)],...pertaining to the coronavirus (COVID-19) pandemic[.]” On April 23, 2020, Appellant received a letter from the Complex stating that the facility was denying his request under KRS 197.025(2)<sup>1</sup> because the records did not contain a specific reference to him. Appellant appeals to this Office and argues that CHFS violated the Act by sending his request to the Complex for a response, rather than responding itself and providing a copy of responsive records in its possession.

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<sup>1</sup> KRS 197.025(2) provides, in pertinent part, “[DOC] shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which contains a specific reference to that individual.” The statute only applies DOC and facilities under its jurisdiction; it does not apply to CHFS.

Under KRS 61.880(1), “Each public agency, upon any request for records made under [the Act], shall determine within three (3) [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 three (3) day period, of its decision.” In response to the coronavirus pandemic, the General Assembly passed Senate Bill 150 (“SB 150”), which extended the time for an agency to respond to an open records request to ten days. SB 150 became effective on March 30, 2020, upon the Governor’s signature. Here, however, CHFS failed to issue any response until 25 days after the request.

On appeal, CHFS argues that it forwarded the request to DOC, “mistakenly interpreting [Appellant’s] request to be one for inmate records.” CHFS maintains that DOC is the proper authority for responding to the request because CHFS “does not possess, nor does any other department with the Cabinet, any records pertaining to DOC-specific guidance.” However, KRS 61.880(1) requires each agency to respond to an open records request after it receives the request. An agency cannot ignore the clear mandate of KRS 61.880(1) by silently forwarding the request to an agency it believes is better suited to respond. CHFS did not provide “information relevant to obtaining the records from a different source” and its failure to respond “ignored the mandatory language of the statute[.]” *Edmondson v. Alig*, 926 S.W.2d 856, 859 (Ky. App. 1996).

In addition, CHFS’s response on appeal reveals that it does possess at least one record responsive to Appellant’s request. CHFS argues that its records are not responsive because it “has issued general guidance[] not specific to prisons[.]” CHFS’s response included a hyperlink to [kycovid19.ky.gov](https://kycovid19.ky.gov). But under the “Resources” tab on that website is a link to a document titled “Novel Coronavirus (COVID-19) Guidance for Correctional Facilities March 10, 2020.”<sup>2</sup> While the record may not be specific to the Complex at which Appellant is housed, it clearly constitutes “guidelines and any other directive records setting forth the procedures for the [DOC] . . . pertaining to the coronavirus (COVID-19) pandemic,” as Appellant requested. At a minimum, the Act required CHFS to

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<sup>2</sup> *Novel Coronavirus (COVID-19) Guidance for Correctional Facilities March 10, 2020*. KENTUCKY PUBLIC HEALTH, available at <https://chfs.ky.gov/agencies/dph/covid19/correctionalfacilitiesforcovid19.pdf> (last accessed May 27, 2020).

issue Appellant a response and provide this record. It failed to do so. Therefore, it violated the Act.

A party aggrieved by this decision shall appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. 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 action or in any subsequent proceeding.

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