



COMMONWEALTH OF KENTUCKY
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In re: Jeff Carpenter/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (“Penitentiary”) did not violate the Open Records Act (“the Act”) when it did not respond to a request for records it did not receive.

Open Records Decision

Inmate Jeff Carpenter (“Appellant”) claims that on December 30, 2020, he requested from the Penitentiary a copy of certain records. After receiving no response from the Penitentiary, the Appellant filed this appeal. On appeal, the Penitentiary asserts that it never received the Appellant’s request.

An agency’s obligations under the Act arise only after receipt of an actual request. KRS 61.872(5). And when a person appeals a public agency’s disposition of a request to inspect records, the public agency carries “[t]he burden of proof in sustaining the action[.]” KRS 61.880(2)(c). Here, the Penitentiary states that it did not receive the Appellant’s request dated December 30, 2020. However, the Penitentiary did receive two subsequent requests from Appellant requesting copies of the same documents. The Penitentiary provides copies of both those requests and the agency’s corresponding responses.¹ On this record, there is no basis to conclude that the Penitentiary violated the Act.

¹ The Penitentiary denied both requests because Appellant lacks sufficient funds in his account to pay for the requested copies. As this Office has previously noted, the Act provides that “[w]hen copies are requested, the custodian may require . . . advance payment of the prescribed

A party aggrieved by this decision may 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 proceedings.

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Distributed to:

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fee[.]” KRS 61.874(1). Furthermore, Kentucky courts have held that correctional facilities may charge inmates reasonable copying costs in providing copies of records under the Act. *See Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985).