



COMMONWEALTH OF KENTUCKY
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21-ORD-053

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In re: Christopher Hawkins/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (the “Penitentiary”) subverted the intent of the Open Records Act (“the Act”) when it failed to provide all responsive records to an inmate’s request.

Open Records Decision

Inmate Christopher Hawkins (“Appellant”) requested a copy of the “list of [his] current medications[.]” Because he is prescribed certain shampoo, the Appellant further stated in his request that, “regarding [the] ‘frequency’” with which he was to use his shampoo, he wanted “specifics, more than just ‘see note.’”¹ The Penitentiary provided Appellant with the list of his current medications with an entry for shampoo that said “see note” for frequency. The Penitentiary did not provide a copy of that note. This appeal followed.

A person may challenge a public agency’s response to a request if he “feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant[.]” KRS 61.880(4). A public agency may subvert the intent of the Act by causing unreasonable delay in producing the requested records. *See, e.g.*, 20-ORD-137 (finding that an agency subverted the Act when it failed to produce records on the date it claimed the records would be

¹ Appellant’s request here appears to be in response to this Office’s decision in 20-ORD-179. In that decision, the Appellant sought “a list” of his current medications, including “any documentation related to” a specific body wash. On appeal, he claimed that he was seeking records related to the frequency with which he was to use that body wash, but that was not part of his original request.

available, in violation of KRS 61.872(5)). This Office has also found that a public agency subverts the intent of the Act when it comingles unresponsive records with responsive records in an effort to thwart efficient inspection of the records. *See, e.g.*, 08-ORD-032.

On appeal, the Appellant claims that he received records that he did not want (the list of medications), and did not receive the record he actually requested (records related to the frequency of use of shampoo). In response, the Penitentiary claims that the Appellant requested a list of his current medications and that is what it provided to him. However, the Penitentiary conducted another search once the appeal was initiated and it found additional responsive records regarding the frequency with which the Appellant must use his shampoo. The Penitentiary asserts that the Appellant can obtain this record by sending a money authorization to the open records custodian.²

The Penitentiary did not deny the Appellant's request for the specified pharmaceutical note. Instead, it provided other responsive records and ignored a portion of the Appellant's request. To provide the note that Appellant specifically requested, the Penitentiary now asks the Appellant to resubmit another request. In doing so, the Penitentiary has indirectly caused an unreasonable delay by ignoring a portion of the Appellant's request. It now seeks to increase that delay by requiring the Appellant to resubmit his request.

The Appellant also claims that the Penitentiary provided him with records that he did not request. In 08-ORD-032, this Office found that a public agency subverted the intent of the Act when it comingled unresponsive records with responsive records, thus frustrating the requester's attempt to inspect the requested records in person. A public agency could also subvert the intent of the Act by engaging in the same conduct and producing unnecessary copies of records, thus unnecessarily driving up the cost associated with the request. However, the Appellant asked for a list of his current medications and that is what the Penitentiary provided to him. There is no evidence in this record that the Penitentiary intentionally provided unresponsive records to the Appellant.

² The Penitentiary claims that by taking this action it has mooted the appeal. But the Penitentiary has not actually provided the record to the Appellant. *See* 40 KAR 1:030 § 6 ("If the *requested documents* are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter."). Instead, it is requiring him to resubmit a request even though there was nothing deficient with his original request.

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.

Daniel Cameron
Attorney General

/s/Marc Manley
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Distributed to:

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