



COMMONWEALTH OF KENTUCKY  
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**21-ORD-156**

August 20, 2021

In re: Bruce Batchelder/Kentucky Department of Corrections and Kentucky State Penitentiary

**Summary:** Neither the Kentucky Department of Corrections (the “Department”) nor the Kentucky State Penitentiary (the “Penitentiary”) violated the Open Records Act (the “Act”) when they did not respond to a request for records they claim they never received.

***Open Records Decision***

Inmate Bruce Batchelder (the “Appellant”) claims to have mailed a request to inspect records to both the Department and the Penitentiary on June 10, 2021, in which he sought copies of “all claimed authority and information that lawfully enables and justifies” certain actions taken by the Department and the Penitentiary, including various policies, procedures, memos, statutes, bills, and other governing authorities.<sup>1</sup> Neither the Department nor the Penitentiary responded to the Appellant’s request, and the Appellant has now filed this appeal.

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<sup>1</sup> Ordinarily, inmates send requests to inspect records on forms provided by correctional facilities. Here, the Appellant sent multiple documents to the Department including a grievance and a request that purports to be a request under the Freedom of Information Act, which is the federal analog to Kentucky’s Open Records Act. The grievance was dated May 27, 2021. However, at the bottom of the request to inspect records, the Appellant certified that it had been sent on May 29, 2021, which indicates that he sent the request separately. On appeal, however, the Appellant claims he mailed the request on June 10, 2021. In short, it is not clear when the Appellant actually sent the documents he attached to this appeal, or if he sent the documents together or separately.

Under KRS 61.880(1), as it is now enacted, a public agency must respond to an open records request within five business days of receipt. The Department states that it “inadvertently” overlooked the Appellant’s request “due to the number of letters and pages submitted by the [Appellant].” The Department also provides emails from Department staff in which they claim to have searched for a copy of the Appellant’s request and they are unable to locate it. Therefore, it appears as though the Department never received the request. The Penitentiary also claims that it never received the Appellant’s request.

This Office has historically found that it is unable to resolve factual disputes regarding a public agency’s actual receipt of a request to inspect records. *See, e.g.*, 19-ORD-018; 96-ORD-070. Here, there are many factual disputes, including the Appellant’s claim that he mailed the request on June 10, 2021, but the request he attaches to his appeal was dated May 29, 2021. It is also not clear whether the Appellant attached his request to his grievance letter, or if he sent his request independently of the grievance. Given the multiple documents submitted by the Appellant, and his inconsistent claims about when he actually sent the request, this Office cannot find that either the Department or Penitentiary violated the Act by failing to respond a request that they claim they never received.

Regarding the substance of the Appellant’s request, the Appellant sought copies of various policies and procedures, memos, statutes, administrative or executive orders, legislative bills, or other such materials authorizing certain correctional facility practices. On appeal, the Department claims it would have denied the request because the records do not contain a specific reference to the Appellant. KRS 197.025(2) provides that the Department is not “required to comply with a request for any record from any inmate . . . unless the request is for a record which contains a specific reference to that individual.” KRS 197.025(2). Because the requested records do not contain a specific reference to the Appellant, the Department did not violate the Act when it ultimately denied the Appellant’s 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  
Marc Manley  
Assistant Attorney General

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Distributed to:

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