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21-ORD-158

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In re: Amos Gilliam/Clark County Detention Center

Summary: The Clark County Detention Center (the "Center") did not violate the Open Records Act (the "Act") when it responded to a request to inspect records within five business days of receipt.

Open Records Decision

On July 13, 2021, inmate Amos Gilliam (the "Appellant") submitted a request to the Center for copies of all of his "medical records from January 14, 2020 to March 25, 2021, as well as all internal kiosks [*sic*] medical records, grievances, requests, and all responses thereto." The Appellant then initiated this appeal on July 20, 2021, after receiving no response from the Center.

A public agency is required to respond to a request to inspect records within five business days of receiving the request. KRS 61.880(1).[1] On appeal, the Center claims that it did not receive the Appellant's request until July 20, 2021, the same day he initiated this appeal. Because the Center responded to the request within five business days of receipt, it did not violate the Act.

[1] Under KRS 197.025(7), correctional facilities are required to respond to requests from inmates within five business days. Previously, when public agencies were only permitted three business days to respond to a request under KRS 61.880(1), the distinction between correctional facilities and other public agencies mattered. Now that all public agencies must respond within five business of receiving a request, the distinction between KRS 61.880(1) and KRS 197.025(7) is less relevant. Thus, under either statute, the Center was required to respond within five business days.

On appeal, the Center provides a copy of its response, in which it had notified the Appellant that it was approving his request. However, in its response, the Center also stated that there were 63,259 pages of responsive records. It therefore informed the Appellant that the fee for copies of these records would be $6,325.90, at ten cents per page. The Center requested the Appellant to provide payment of the fee, as well as postage, prior to delivering the records. Alternatively, the Center invited the Appellant to narrow the scope of his request, which would result in fewer pages and a lower copying fee. It is unclear whether the Appellant has accepted the Center's invitation to narrow his request.

Under KRS 61.872(3)(b), a resident of the Commonwealth may receive copies of public records by mail, but the custodian has no duty to mail such copies until "receipt of all fees and the cost of mailing." But under KRS 61.880(4), a public agency subverts the intent of the Act by demanding excessive fees. Here, the Center's base fee, ten cents per page, is not excessive. *See Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985). But the sheer amount of records that the Center claims is responsive has increased the total fee to more than $6,300.00. The Appellant sought medical records spanning slightly more than one year, as well as "grievances, requests, and all responses thereto." If the Appellant has generated over 63,000 pages of responsive records in 15 months, then it is not unreasonable for the Center to invite him to narrow the scope of his request and alleviate the burden of the total cost. But if the Center has needlessly expanded the scope of the Appellant's request beyond the January 2020 to March 2021 period in order to generate a fee that it knows cannot be paid, then such conduct would subvert the intent of the Act under KRS 61.880(4).

This Office has historically found that it is unable to resolve factual disputes about the number of responsive records possessed by a public agency. *See, e.g.*, 21-ORD-082; 19-ORD-083; 03- ORD-61; OAG 89-81. The Office does so again here, and is unable to conclusively find that the Center subverted the intent of the Act based on the evidence in the record.

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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