



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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**21-ORD-164**

August 31, 2021

In re: Christopher Sawyer/Boone County Sheriff's Office

**Summary:** The Boone County Sheriff's Office ("Sheriff's Office") did not violate the Open Records Act ("the Act") when it justifiably relied on a court order in not responding to a request to inspect records.

***Open Records Decision***

On June 15, 2021, Boone County Jail inmate Christopher Sawyer ("Appellant") requested certain records from the Sheriff's Office relating to a specific address and a shooting death. Recognizing that the Appellant had been criminally charged and was represented by counsel, the Sheriff's Office notified the Appellant's counsel of the request. Counsel for the Appellant confirmed that the Appellant had been advised of his Fifth Amendment right to remain silent. Therefore, the Sheriff's Office ceased communication with the Appellant and sent its response to the Appellant's request to the Appellant's attorney on June 24, 2021.<sup>1</sup>

On July 13, 2021, the Boone Circuit Court entered an order directing that the Appellant "have no direct contact or correspondence with the prosecution, law enforcement, Circuit Court Clerks, or employees of the Administrative Office of the Courts relating to [the pending criminal] case unless or until he is deemed competent to represent himself." Instead, the court ordered that "all correspondence from the Defendant relating to this case shall be made through and via his appointed counsel." Nevertheless, the Appellant wrote to the Sheriff's Office on July 19, 2021, citing the Act and requesting the names and badge numbers of certain officers involved in his case. On July 28,

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<sup>1</sup> The Sheriff's Office had partially granted the request, and partially denied it.

2021, after receiving no response to this request, the Appellant initiated this appeal and sought review of the Sheriff's Office's disposition of both his requests.

Under KRS 197.025(3), a person "confined in a penal facility shall challenge any denial of an open record with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial[.]" Because the Sheriff's Office issued its denial of the Appellant's first request on June 24, 2021, the Appellant was required to appeal that denial by July 14, 2021. But he did not initiate this appeal until July 28, 2021, so his appeal is untimely. Thus, this Office is without jurisdiction to consider the Appellant's appeal of the first denial.

The Sheriff's Office issued no response to the Appellant's second request. In ordinary circumstances, a public agency's failure to respond to a request to inspect records within five business days would constitute a violation of KRS 61.880(1). However, the facts of this case are anything but ordinary. Here, the Appellant is currently charged with a crime and his attorney notified the Sheriff's Office that the Appellant's Fifth Amendment right to remain silent has been invoked. The Circuit Court entered an order questioning the Appellant's competency to waive that right, and ordered him to cease communications with law enforcement until a competency finding could be made. The Sheriff's Office knew of that order at the time it received the Appellant's second request, and reasonably believed that further correspondence with the Appellant would not only encourage him to continue violating a court order, but such a response might even itself have been a violation of the order. The simple truth is that the Circuit Court has instructed there to be no direct communications between the Appellant and law enforcement, including the Sheriff's Office, until further orders from the court. Therefore, under these facts, this Office finds that the Circuit Court's order controlled the conduct of the parties, KRS 61.880(1) notwithstanding. Accordingly, the Sheriff's Office did not violate the Act when it did not respond to the Appellant's request submitted after the entry of the Circuit Court's order.<sup>2</sup>

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.

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<sup>2</sup> Under the terms of the Circuit Court's order, the Appellant's counsel may submit requests to the Sheriff's Office on the Appellant's behalf. However, this Office defers to the Circuit Court as the authoritative interpreter of its orders.

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/ James M. Herrick

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Assistant Attorney General

#248

Distributed to:

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