



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-172

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In re: Dave Burke/Kenton County Detention Center

Summary: The Kenton County Detention Center (the “Center”) violated the Open Records Act (“the Act”) when it failed to respond to the Appellant’s request.

Open Records Decision

On July 18, 2021, Dave Burke (“Appellant”) asked the Center for records related to why he “is in isolation[.]” The Appellant specified the scope of his request included “write-ups” and “incident reports” as well as any related video. The Appellant also requested a copy of the “Kenton County Jails Due Process Policy[.]” Having received no response from the Center, the Appellant appealed to this Office on August 9, 2021.

Upon receiving a request under the Act, a public agency must “determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1). Here, the Center did not respond until after the appeal was initiated on August 20, 2021. Thus, the Center violated the Act because it did not respond to the Appellant’s request within five business days as the Act requires.¹

¹ On August 20, 2021, after the appeal was initiated, the Center provided thirty-nine pages of responsive records but denied inspection of some records under KRS 61.878(1)(l) and KRS 17.150(2)(d). Under KRS 61.878(1)(l) “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly” are excluded from inspection under the Act. Under KRS 17.150(2), “[i]ntelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made.” A

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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/s/Matthew Ray
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Distributed to:

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public agency may still deny inspection of portions of a record even if prosecution has concluded or a decision not to prosecute has been made if “[i]nformation contained in the records [is] to be used in a prospective law enforcement action.” KRS 17.150(2)(d). The burden is on the Center to explain with specificity how this exception applies. KRS 17.150(3). Here, the Center specifically explains that it redacted witness statements made against the Appellant because those statements will be used in a prospective prosecution in which the Appellant has been charged with a felony. Because the Center identified a specific prospective law enforcement action in which the redacted information would be used, it carried its burden of proof that KRS 17.150(2) applies to the information it has redacted.