



COMMONWEALTH OF KENTUCKY  
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**22-ORD-162**

August 10, 2022

In re: Jimmy Hall/Morgantown Police Department

**Summary:** The Morgantown Police Department (the “Department”) violated the Open Records Act (“the Act”) when it failed to respond within five business days to a request it received under the Act. However, the Department appears to have now provided all responsive records to the Appellant.

***Open Records Decision***

On June 23, 2022, inmate Jimmy Hall (“Appellant”) submitted a request to the Department for a copy of documents related to a specific court case, *Commonwealth v. Hall*, Butler Circuit Court Case No. 14-CR-00059.<sup>1</sup> Specifically, the Appellant requested a copy of the search warrant and its supporting affidavit that he claims was hand delivered to him on June 30, 2015. On July 12, 2022, having received no response from the Detention Center, the Appellant initiated this appeal.

Under KRS 61.880(1), a public agency must respond to a request to inspect public records within five business days of receiving the request. Here, the Appellant alleges that the Department did not respond to his request. On appeal, the Department does not claim to have not received the Appellant’s request, or that the Department issued a timely response to it. Accordingly, the Department violated the Act when it did not respond within five business days to a request under the Act.

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<sup>1</sup> The Appellant’s initial request is dated June 21, 2022, but he claims that he mailed it on June 23, 2022.

On appeal, the Department explains that it stores all case files prior to 2016 in hard copy format. As described in the Appellant's request, his case was initiated in 2014. Therefore, the Department searched the hard copy of its 2014 case file, as well as its 2015 case files, for the requested records. The Department claims that its search of these files did not yield a copy of any search warrant, or the affidavit in support of the search warrant, that that the Appellant claims was hand delivered to him on June 30, 2015. After the Department's search of its own records yielded no responsive records, the Department requested a copy of the records from the Commonwealth Attorney that serves Butler County. The Commonwealth Attorney provided the Department with a copy of two search warrants and their supporting affidavits, both of which were signed on June 23, 2014. The Department provided the Appellant with those records. Thus, the Department has now provided all responsive records to the Appellant.<sup>2</sup>

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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. The Attorney General will accept notice of the complaint emailed to [OAGAppeals@ky.gov](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/Matthew Ray  
Matthew Ray  
Assistant Attorney General

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<sup>2</sup> To the extent the Appellant insists that he was served a search warrant for this case on June 30, 2015, and he claims that the Department must possess a search warrant reflecting that date, he has not presented a *prima facie* case that such a records exists. The Department has provided responsive records dated June 23, 2014, and has stated that it does not possess any other responsive records. Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to present a *prima facie* case that requested records do exist in the possession of the public agency. See *Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). But here, the Appellant has not presented a *prima facie* case that a search warrant in *Commonwealth v. Hall*, Butler Circuit Court Case No. 14-CR-00059 was executed on June 30, 2015. The Office cannot decide whether a search warrant was actually executed and served on that date, as that is a factual dispute. See e.g., 22-ORD-158 (noting the Office could not determine whether a particular special warranty deed was sent to a particular agency at a particular time).

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Distributed to:

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