



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**22-ORD-175**

August 25, 2022

In re: Phillip Hamm/McCracken County Sheriff's Office

**Summary:** The McCracken County Sheriff's Office (the "Sheriff's Office") did not violate the Open Records Act ("the Act") when it issued a timely response to a request under the Act through a person acting under the authority of its official custodian of records.

***Open Records Decision***

On July 12, 2022, Phillip Hamm submitted a request to the Sheriff's Office for a copy of a list of all the open records requests that had been submitted to the Sheriff's Office between February 16 and July 12, 2022. On July 19, 2022, the Sheriff's Office denied the Appellant's request because the Act does not require agencies to create records in response to a request to inspect records.<sup>1</sup> This appeal followed.

The Appellant first claims the Sheriff Office's response violated the Act by failing to issue a timely response. Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). Here, the Appellant sent the request on July 12, 2022 and the Sheriff's Office responded to it on July 19, 2022, or five business days later.<sup>2</sup> Thus, the Sheriff's Office response was timely, and the Sheriff's Office did not violate the Act.

---

<sup>1</sup> The Office has historically found that a public agency is not required to create a list or compile information to fulfill a request. 21-ORD-123 ("a public agency to compile information or to create a record that does not already exist"); 19-ORD-051 (the Office "cannot order an agency to create records, or declare its failure to do so a subversion of the intent of the Open Records Act.").

<sup>2</sup> The intervening Saturday and Sunday, July 16 and July 17, respectfully, do not count towards the agency's deadline to respond to a request. KRS 61.880(1).

The Appellant also claims the Sheriff's Office violated the Act because the McCracken County Attorney responded to the request instead of the official records custodian of the Sheriff's Office. However, a public agency's response to a request under the Act "shall be issued by the official custodian *or under his or her authority*, and it shall constitute final agency action." KRS 61.880(1) (emphasis added). Here, the McCracken County Attorney issued a response to the Appellant's request under the authority of the Sheriff's Office. There is nothing in the record before this Office to suggest that the McCracken County Attorney lacked the authority to issue a response on the Sheriff's Office's behalf. Thus, the Sheriff's Office did not violate the Act.

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

#255

Distributed to:

Phillip A. Hamm  
Sam Clymer  
Matt Carter