



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-229

October 25, 2022

In re: Dennis Bell/McCracken County Coroner's Office

Summary: The McCracken County Coroner's Office ("the Coroner's Office") violated the Open Records Act ("the Act") when it failed to respond to a request for records within five business days.

Open Records Decision

On August 29, 2022, Dennis Bell ("Appellant") attempted to deliver a request for a copy of the McCracken County Coroner's report about a deceased individual, but found the door of the Coroner's Office locked. The Appellant then attempted to deliver the request to the County Judge/Executive's office, but was told that he must take it to the County Attorney's office. According to the Appellant, personnel at the County Attorney's office made a copy of his request, but informed him that he must submit it to the County Judge/Executive's office. On his second attempt, the County Judge/Executive's office accepted the Appellant's request.

On September 8, 2022, seven business days after delivering his request, the Appellant telephoned the Coroner because he had received no response. The Coroner advised him that she could not provide the requested records without authorization from the County Attorney. This appeal followed.

Under the Act, a public agency has five business days to fulfill a request for public records or deny such a request and explain why.¹ KRS 61.880(1). On appeal,

¹ This time may be extended if the records are "in active use, in storage or not otherwise available," but the agency must give "a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection." KRS 61.872(5).

the Coroner's Office acknowledges receipt of the request and admits that no timely response was issued.² Therefore, the Coroner's Office violated the Act.³

Through his appeal, the Appellant claims that the requested records "are being unlawfully concealed from [him] or the county attorney is otherwise impairing their availability." This amounts to an allegation that "the intent of [the Act] is being subverted by an agency short of denial of inspection, including . . . misdirection of the applicant," under KRS 61.880(4). However, the Coroner's Office explains that the County Attorney recently assumed the responsibility of responding to open records requests on behalf of all county agencies, resulting in some temporary confusion that caused the Appellant's request to be "inadvertently overlooked" because it did not reach the County Attorney. Under these facts, this Office finds that the internal failures of communication with regard to the Appellant's request did not constitute subversion by "misdirection" under KRS 61.880(4). *See, e.g., 21-ORD-228.*

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 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

s/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:
Mr. Dennis Bell
Sam Clymer, Esq.
Amanda Melton, Coroner

² The Coroner's Office argues that the violation of KRS 61.880(1) is "mitigated" by substantive remedial measures allegedly taken within county government, or by the fact that the Coroner's Office eventually issued a response to the request. However, as stated in 22-ORD-205, the role of this Office under KRS 61.880(2) is not to decide whether a violation of the Act is "mitigated," but merely to decide whether a public agency did or did not violate the Act.

³ On September 27, 2022, after the Appellant initiated this appeal, the Coroner's Office issued a response to the Appellant's request and provided him a copy of all responsive records, which consisted of a death certificate and Provisional Report of Death.