



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-211

September 27, 2024

In re: Buster Chandler/Department of Public Advocacy

**Summary:** The Department of Public Advocacy (the “Department”) did not violate the Open Records Act (“the Act”) when it did not respond to a request it claims it did not receive. The Department also did not violate the Act when it did not produce records exempt under KRS 61.878(1)(p).

***Open Records Decision***

Inmate Buster Chandler (“Appellant”) claims that on July 1, 2024, he submitted a request to the Department for a copy of his case file from a specific Fayette County criminal case.<sup>1</sup> Having received no response from the Department by August 27, 2024, the Appellant initiated this appeal.

On appeal, the Department claims it never received the Appellant’s request. If an agency receives a request under the Act, it “shall 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) (emphasis added). Here, the Department claims it did not receive the Appellant’s request until this appeal was initiated.<sup>2</sup> The Office cannot resolve factual disputes, such as whether an agency actually received a request to inspect records. *See, e.g.*, 23-ORD-062; 22-ORD-024; 21-ORD-233; 21-ORD-

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<sup>1</sup> The original records request the Appellant provided to the Office in this appeal is undated.

<sup>2</sup> As proof, the Department provides an affidavit signed by a legal secretary at its branch location to which the Appellant allegedly sent his request. The affidavit states the legal secretary did not receive the records request the Appellant provided to the Office as part of this appeal. The Department also claims that, once it received the Appellant’s request attached to the notice of appeal, it issued a timely response. As proof, the Department provides a copy of its September 6, 2024, response to the Appellant’s request.

163. Thus, the Office cannot find that the Department violated the Act when it did not respond to a request that it claims it did not receive.

The Department also states that the Appellant's "case file" is exempt under KRS 61.878(1)(p). That paragraph exempts from disclosure "[c]lient and case files maintained by the Department of Public Advocacy." KRS 61.878(1)(p). The records requested by the Appellant are exempt under the Act.<sup>3</sup> Accordingly, the Department did not violate the Act when it did not produce records exempt under KRS 61.878(1)(p).

A party aggrieved by this decision may appeal it by initiating an 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.

**Russell Coleman**  
**Attorney General**

/s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

Buster Chandler #107034  
Melanie Lowe  
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<sup>3</sup> Although the Act exempts the Appellant's own case file, there are other authorities that control a client's right of access to his own case file from his attorney. *See, e.g.*, SCR 3.130(1.16(d)). However, the Office's authority is to determine whether an agency has complied with the Act, KRS 61.880(2), not whether it complied with other statutes or rules, *see, e.g.*, 22-ORD-235 n.3