



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

24-ORD-230

October 25, 2024

In re: Kareem Jenkins/Office of the Governor

Summary: The Office of the Governor (“the Agency”) committed a technical violation of Open Records Act (“the Act”) when it did not respond to a request within five days as required by the Act. However, the Agency did provide the Appellant with all records responsive to his request upon receiving notice of the Appellant’s appeal.

Open Records Decision

On August 28, 2024, inmate Kareem Jenkins (“Appellant”) submitted a request seeking records related to “any action” taken on a grievance he previously had sent to the Agency. On October 2, 2024, having received no response from the Agency, the Appellant initiated this appeal.

Under the Act, a public agency “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).

On appeal, the Agency acknowledges it received the Appellant’s August 28, 2024, request but its mail room “forwarded the request to the Office of Constituent Services.” The Agency further acknowledges the letter “invoke[d] the [Act],” but “[n]either the employees in the mail room nor the employees in the Office of Constituent Services recognized the letter as making a request for public records.”

Under KRS 61.872(4), if “the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.” Thus, although the Agency’s mail room and constituent services employees are not the official custodian of the Agency’s records, they were required to either notify the Appellant of the records custodian’s name and location

or forward the Appellant's request to the records custodian. *See, e.g.*, 22-ORD-202; 22-ORD-041; 19-ORD-132; 12-ORD-053.

Upon receiving notice of the Appellant's appeal, the Agency provided the Appellant with all records responsive to his request. However, because the Agency admitted it received the Appellant's request but did not respond within five business days as mandated by the plain language of the Act, the Office must conclude that the Agency committed a technical violation of the Act by causing "delay past the five (5) day period described in" KRS 61.880(1). KRS 61.880(4). This is consistent with previously issued opinions. *See, e.g.* 24-ORD-163 n.1 (finding an appeal of the Agency's failure to respond was not moot when the Agency produced the requested records after receiving the notice of the appeal); 23-ORD-274 n.1 (finding an appeal was not rendered moot by the Agency's production of responsive records after the appeal was initiated because the Appellant alleged the agency subverted the Act by failing to respond within five business days); 23-ORD-007 (finding the Agency violated the Act when it failed to respond to the Appellant's request within five business days although the Agency stated it planned to provide responsive records).

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Kareem Jenkins #303046
Travis Mayo
Taylor Payne
Laura Tipton