



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-250

November 26, 2024

In re: Dawn Crawford/Kentucky Department of Insurance

Summary: The Office cannot find that the Kentucky Department of Insurance (“the Department”) violated the Open Records Act (“the Act”) when its response was not received by the requestor.

Open Records Decision

On October 1, 2024, Dawn Crawford (“the Appellant”) submitted a request to the Department for “all information related to correspondence and investigation” for a specific file number. The Appellant further specified that responsive records included “calls, emails, policies, [and] audit trails.” On October 25, 2024, having received no further response from the Department, the Appellant initiated this appeal.

Under KRS 61.880(1), upon receiving a request for records 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.” However, the Office has consistently found it is unable to resolve factual disputes between a requester and a public agency, such as whether a requester received an agency’s response to a request. *See, e.g.*, 21-ORD-233 (the agency claimed it issued a response, but the requester claimed he did not receive it); *see also* 22-ORD-125 (the agency claimed it did not receive the request).

On appeal, the Department states it sent a response to the Appellant on October 4, 2023. However, unbeknownst to the Department, it had misspelled the Appellant’s email address. The Department does not state that it received a rejected delivery email, and therefore, whether it was aware that its response had not been delivered. The Office cannot resolve the factual dispute between the parties about whether the Department knew its response had failed to be delivered. *See* 23-ORD-315 (holding that the Office could not resolve the factual dispute regarding whether the agency was aware that its response was not delivered due to a misspelled email

address). Therefore, the Office cannot find that the Department violated the Act by failing to issue a timely response.¹

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:

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¹ On appeal, the Department states that, after learning that its response was not delivered, it sent its response to the Appellant and provided her with responsive records.