



COMMONWEALTH OF KENTUCKY
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25-ORD-009

January 9, 2025

In re: Jason Webb/Luther Luckett Correctional Complex

Summary: An agency bears the burden of demonstrating that a requester withdrew his or her request prior to the expiration of the agency's deadline to respond to the request. The Luther Luckett Correctional Complex ("the Complex") did not sustain its burden of proof that the request was withdrawn, and therefore violated the Open Records Act ("the Act") by not providing a written response stating whether the request would be granted within five business days.

Open Records Decision

Inmate Jason Webb ("the Appellant") submitted a request to the Complex seeking "his trial sentencing plea agreement" for a specified criminal case. In response, the Complex provided a written response stating that the request had been "closed out at inmate's request." This appeal followed.¹

On appeal, the Complex asserts that, before the fifth business day after its receipt of the request, it verbally informed the Appellant that it did not possess the record he requested, that the requested record was in the possession of the Jefferson Circuit Court, and that it could produce a copy of the inmate's "final judgment." The Complex states that, in response, the "Appellant stated that he wished to 'close out,'"

¹ The Appellant also sought to appeal the Complex's response to three other requests. The first two requests were submitted to the Complex on August 26, 2024, and October 8, 2024, respectively. The Complex responded on August 26, 2024, and October 14, 2024, respectively. Under KRS 197.025(3), "all persons confined in a penal facility shall challenge any denial of an open record [request] with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial." The Appellant submitted his appeal to the Office on December 2, 2024, as reflected by the postmark of his appeal. Thus, the Appellant's appeals from the Complex's responses to his August 26 and October 8 requests are time-barred under KRS 197.025(3). The Appellant also sought to appeal a third request, dated November 21, 2024. However, the Appellant did not provide a copy of the Agency's written response to that request. Thus, the Office lacks jurisdiction to issue a decision regarding the Appellant's November 21 request. See KRS 61.880(2)(a).

or withdraw, his request. For his part, the Appellant denies withdrawing his request during that conversation.

The Act does not provide a formal mechanism by which a requester may withdraw his or her request once the request is made. However, the Act generally requires requesters and agencies to communicate in writing. A requester must submit a “*written* application . . . describing the records to be inspected. KRS 61.872(2)(a) (emphasis added). The responding agency “shall notify *in writing* the person making the request . . . of its decision” within five business days. KRS 61.880(1) (emphasis added). Moreover, the Act places the burden of proof in sustaining the agency’s action on the agency. KRS 61.880(2)(c). Assuming both that a requester may withdraw his or her request once it is made, and that a withdrawal of a request excuses the agency from its obligation to respond further under KRS 61.880(1)—propositions with which neither party disagrees—the ultimate question in this appeal is whether the Complex has sustained its burden of proof that the Appellant withdrew his request.

Here, the Appellant has produced a copy of his written request to the Complex for records. The Complex’s response recites that the Appellant orally withdrew his request, and it asserts on appeal that it was therefore no longer required to respond to the Appellant’s request at that point. The Complex’s only proof that the Appellant withdrew his request is its own record memorializing the Appellant’s oral statement; it otherwise has produced no documentation of the withdrawal, such as a writing signed or initialed by the Appellant. Further, on appeal, the Appellant denies that he ever withdrew his request for records.

It is “the basic policy of [the Act] that free and open examination of public records is in the public interest.” KRS 61.871. The Act therefore tilts in favor of requiring a public agency to produce records upon request. To that end, the General Assembly has required that “the exceptions provided for by KRS 61.878 or otherwise provided by law shall be *strictly construed*.” *Id.* (emphasis added).² The public policy embodied in the Act would be frustrated if an agency could be excused from producing records simply by baldly asserting that a requester withdrew his or her request, without further proof. It follows that, in order for an agency to sustain its burden of proof that a request has been withdrawn and that it was no longer required to respond to the request, the agency must provide some documentation of the withdrawal beyond its mere say-so.³ Accordingly, the Complex has not met its burden here to prove the Appellant withdrew his request. The Complex therefore violated the Act by

² The Office assumes, without deciding, that a valid withdrawal of a request is an exception “provided by law” permitting an agency not to comply with the Act.

³ Clearly, a written communication from the requester would suffice. The agency could also ask the requester to sign or initial a form created by the agency for this purpose. Without deciding, there may also be other ways the agency could sustain its burden of proof.

failing to provide a written response to the request within five business days stating that it does not possess the record requested by the Appellant.

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
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Distributed to:

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