



COMMONWEALTH OF KENTUCKY
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20-ORD-053

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In re: Carlos Thurman/Northpoint Training Center

Summary: Northpoint Training Center (“NTC”) did not violate the Open Records Act (“the Act”) by not providing a strip search log that did not exist.

Open Records Decision

NTC did not violate the Act by denying a March 2, 2020, request by inmate Carlos Thurman (“Appellant”) for a copy of a “strip search log sheet from 2-28-20” because the requested record did not exist.

NTC received the request on March 3, 2020, and issued a denial on March 10, 2020, stating that “[a]fter a thorough search” it was “unable to locate the record.” On appeal, Appellant argued that “all body cavity searches are to be logged down with the date and time, [and] the person authorizing the search.” He provided a copy of Corrections Policy and Procedure (“CPP”) 9.8, which governs strip searches at state correctional facilities. *See* 501 KAR 6:020 § 1. In its response to the appeal, NTC argued that an agency cannot provide “a record that it does not have.”

NTC is correct that a public agency cannot provide a requester access to a record that does not exist. *See Bowling v. Lexington-Fayette Urban County Government*, 172 S.W.3d 333, 341 (Ky. 2005). Once an agency affirmatively states

that a record does not exist, the burden then shifts to the requester to present a *prima facie* case that it should exist. *Id.*

CPP 9.8(II)(A)(1)(g) requires strip searches, with some exceptions, to be “logged and documented in the institutional strip search logbook.” CPP 9.8(I) defines “strip search” as “a body search during which a person is required to remove his clothing, and during which a person is subject to visual inspection of the genital and anal area, as well as other body cavities.”

Appellant alleged only that he was required to put his hands into his mouth, not that he was required to remove his clothing or was subject to visual inspection of body cavities. Accordingly, he failed to allege that a “strip search” occurred as defined in CPP 9.8(I), and thus did not make a *prima facie* case that a strip search log should exist. Therefore, NTC complied with the Act by making a thorough search and reporting that no such record was found.

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. 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.

Daniel Cameron
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/s/ James M. Herrick

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