



COMMONWEALTH OF KENTUCKY
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20-ORD-054

April 6, 2020

In re: Wathaniel Woods/Little Sandy Correctional Complex

Summary: Little Sandy Correctional Complex (“LSCC”) did not violate the Open Records Act (“the Act”) by not providing a court record that did not exist in its possession.

Open Records Decision

LSCC did not violate the Act by denying a March 5, 2020, request by inmate Wathaniel Woods (“Appellant”) for a copy of a court order sending him to Kentucky State Reformatory “for medical treatment from Jefferson County Jail” because the requested record did not exist in its possession.

On March 9, 2020, LSCC advised Appellant that “this department does not have custody of the record requested,” but that he could request a copy of a medical transfer form that existed in his file. On appeal, Appellant argued that LSCC “did not conduct a search of [his] files to obtain said information.” In its response to the appeal, LSCC argued that an agency cannot provide “a record that it does not have.”

LSCC 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.*

Appellant alleged on appeal that LSCC should have the court order because he was transferred “per KRS 441.560” and he “was housed at the Facility in April 2017,” the month the court order was allegedly issued. However, when a prisoner being held in a local jail becomes injured or sick, KRS 441.560 authorizes the jailer to “request that the commissioner of the department ... transfer the prisoner to a facility operated by the department[.]” KRS 441.560 does not contemplate that a court order his transfer. LSCC informed Appellant that there existed in his file a copy of the “medical transfer form,” and invited Appellant to resubmit his request for that specific form. KRS 441.560, in conjunction with LSCC’s response that a “medical transfer” form exists, indicates that no “court order” exists, and LSCC has affirmatively denied the existence of such a court order in its possession. Therefore, LSCC complied with the Act by expressly stating that it possessed no such record.

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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Distribution:

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