



COMMONWEALTH OF KENTUCKY
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20-ORD-066

April 27, 2020

In re: Ange Lane/Green River Correctional Complex

Summary: Green River Correctional Complex (“Complex”) violated the Open Records Act (“the Act”) by initially failing to conduct a search for records and failing to notify the requester that it was not the custodian of other records.

Open Records Decision

On March 5, 2020, inmate Ange Lane (“Appellant”) requested “to review any documentation of e-mails sent by any staff or received by any staff concerning [his] classification, reclassification(s), or reference to the override (8) misdemeanor charge in New York dated January 25, 1980, to include any decision(s) of classification or reclassification appeals.” The Complex initially denied the request as “not properly phrased” and “overly burdensome” because it did not identify individual staff members whose e-mails Appellant was seeking and therefore “[i]t would take many hours” to conduct a search.

On appeal, the Complex waived this argument by stating that it had conducted a search, located responsive e-mails, and made them available for Appellant’s inspection. “If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.” 40 KAR 1:030 § 6. However, not all requested documents were made available to Appellant. The Complex admitted that additional documents exist, but they are in the possession of Roederer Correctional Complex. “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." KRS 61.872(4). The Complex was required to deny that it was the custodian of these additional records and furnish "information relevant to obtaining the records from a different source." *Edmondson v. Alig*, 926 S.W.2d 856, 859 (Ky. App. 1996).

Because this appeal is not moot, this Office can also issue an opinion regarding the Complex's other violation - it failed to initially search for records. The Complex demonstrated it was capable of searching for the requested records, but only chose to do so once an appeal was filed. "If the requester makes a *prima facie* showing that responsive records have not been accounted for, then the agency may also be called upon to prove that its search was adequate." *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013). Here, a *prima facie* case has been established that records were not accounted for because they were later produced. As such, the Complex violated the Act by not producing the requested records within the required five business days. KRS 197.025(7).

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
Attorney General

/s/ James M. Herrick

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20-ORD-066

Page 3

Distribution:

Ange Lane, #304240

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