



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**20-ORD-074**

May 19, 2020

In re: Shannon M. James/Office of the Governor

**Summary:** The Office of the Governor (“Governor’s Office”) did not violate the Open Records Act (“Act”) in denying an open records request based on the nonexistence of documents responsive to the request. The Governor’s Office discharged its duty under the Act in conducting a reasonable search and notifying the requester in a timely written response that no records were located.

***Open Records Decision***

On March 16, 2020, Shannon M. James (“Appellant”) submitted to the Governor’s Office a request for a copy of “all documents pertaining to Christian ‘Kit’ Martin.” The Governor’s Office timely replied that “[a]fter a diligent search, the Office of the Governor was unable to locate any responsive records.”

The right to inspect public records and receive copies upon request only attaches if the records in dispute are “prepared, owned, used, in the possession of or retained by a public agency.” KRS 61.870(2). A public agency cannot afford a requester access to a record that does not exist. *Bowling v. Lexington-Fayette Urban Cty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Once the public agency affirmatively states the requested records do not exist, the burden shifts to the requester to present a *prima facie* case that the requested records do exist. *Id.* Only after the requester makes a *prima facie* showing that records should exist is the agency

“called upon to prove its search was adequate.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013).

Here, Appellant has not made any showing that the Governor’s Office should possess any records “pertaining to Christian ‘Kit’ Martin.” Accordingly, the Governor’s Office was not required to explain the adequacy of its search. Nevertheless, the Governor’s Office explained the search it conducted on appeal and demonstrated that none of its attempts to locate the records produced any results. Based upon the foregoing, this Office finds the Governor’s Office did not violate the Act in denying Appellant’s request for nonexistent records.

A party aggrieved by this decision shall 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 proceeding.

Daniel J. Cameron  
Attorney General

/s/ Michelle D. Harrison

Michelle D. Harrison  
Assistant Attorney General

#105

Distributed to:

Shannon M. James  
Taylor Payne