



COMMONWEALTH OF KENTUCKY
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In re: Gerardo Rodriguez/Kentucky State Penitentiary

Summary: Kentucky State Penitentiary (“Penitentiary”) did not violate the Open Records Act (“the Act”) by failing to produce a record that did not exist in its possession.

Open Records Decision

On May 26, 2020, inmate Gerardo Rodriguez (“Appellant”) submitted a request to the Penitentiary dated May 15, 2020, for a copy of his 2014 medical records from the Kentucky Correctional Psychiatric Center (“KCPC”). KCPC is a mental health facility operated by the Cabinet for Health and Family Services, to which mentally ill inmates or criminal defendants may be admitted by court order pursuant to KRS 504.080(1) and 908 KAR 2:040 § 3, or by request of the Department of Corrections (“Department”) pursuant to KRS 202A.201(2) and 908 KAR 2:040 § 2. The Penitentiary denied the request on grounds that Appellant had initialed the request instead of signing his full name, and that the Penitentiary possessed no records from KCPC.

A public agency cannot provide a requester access to a record that does not exist in its possession. *See Bowling v. Lexington-Fayette Urban County Government*, 172 S.W.3d 333, 341 (Ky. 2005). Once an agency affirmatively states that it has no responsive records, the burden then shifts to the requester to present a *prima facie* case that the requested records should exist in the agency’s possession. *Id.* On appeal, the Penitentiary explained that KCPC records “are not maintained in the medical records for inmates incarcerated within the [Department].” Appellant has

made no *prima facie* showing that a copy of his KCPC records should exist in the possession of the Penitentiary. Accordingly, the Penitentiary did not violate the Act. Because the absence of responsive records is dispositive, it is unnecessary to address whether Appellant's request complied with the signature requirement under KRS 61.872(2).

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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Assistant Attorney General

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Distributed to:

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