



COMMONWEALTH OF KENTUCKY
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20-ORD-178

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In re: Uriah Pasha/Little Sandy Correctional Complex

Summary: Little Sandy Correctional Complex (“Complex”) did not violate the Open Records Act (“the Act”) when it did not provide a record that does not exist.

Open Records Decision

Inmate Uriah Pasha (“Appellant”) requested “a copy of any and all correspondence [he] wrote to Capt. Josh Montgomery concerning placement in Maximum Assaultive [*sic*] Status in the year 2020.” The Complex responded that Captain (now Major) Montgomery did not have any correspondence from Appellant on that subject. This appeal followed.

Appellant claims that the Complex’s response was “a lie” because Major Montgomery had previously told him that the correspondence exists. However, the Complex states that no such correspondence exists in the Kentucky Offender Management System (“KOMS”). Furthermore, the Complex has provided a statement from Major Montgomery asserting that he has no record of any correspondence from Appellant concerning his Maximum Assault Status.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist. *Bowling v. Lexington-Fayette Urban Cty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that records do or should exist, “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) (citing *Bowling*, 172 S.W.3d at 341).

In this case, even if Appellant had established a *prima facie* case that Major Montgomery possesses the correspondence sought, the Complex has rebutted that presumption. In particular, the Complex has provided Major Montgomery’s written statement to the contrary. Furthermore, the Complex performed an adequate search by consulting Major Montgomery and attempting to locate the correspondence in KOMS. *See, e.g.*, 14-ORD-074 (finding that reviewing the inmate’s KOMS file and consulting the alleged recipient was an adequate search to locate correspondence). For these reasons, the Complex did not violate the Act.

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 proceeding.

Daniel Cameron
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/s/ James M. Herrick

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Distributed to:

Uriah Pasha, #092028

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