



COMMONWEALTH OF KENTUCKY
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21-ORD-010

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In re: Christopher Applegate/Luther Lockett Correctional Complex

Summary: Luther Lockett Correctional Complex (“Complex”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

Open Records Decision

Inmate Christopher Applegate (“Appellant”) requested e-mails “from or to” the Complex’s chaplain concerning the Appellant. The Complex responded that no such e-mails could be located. This appeal followed.

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).

The Appellant claims that e-mails responsive to his request must exist because a disciplinary report states, “It was verified by email that Inmate Applegate was not in the Chapel by Chaplain Casey.” Additionally, the Appellant alleges that the chaplain sent an e-mail “approximately one year ago” concerning a telephone call he received from the Appellant’s father.

However, the Complex explains that the chaplain verified the Appellant's location on that occasion by telephone, but "[t]he information from that phone conversation was then relayed through email by another staff member, not the Chaplain." That e-mail was not sent "from or to" the chaplain and was not responsive to Appellant's request. As to the Appellant's second allegation, the Complex states that the chaplain did have a conversation with the Appellant's father, but that there is no e-mail memorializing that conversation. For these reasons, even if the Appellant had established a *prima facie* case that the Complex possesses records responsive to his request, the Complex has rebutted that presumption. For this reason, 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:

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