



COMMONWEALTH OF KENTUCKY
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21-ORD-015

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In re: Randy Whitson/Little Sandy Correctional Complex

Summary: The Little Sandy Correctional Complex (“Complex”) violated the Open Records Act (“the Act”) when it failed to notify an inmate that it did not possess the records sought. However, the Complex did not violate the Act when it denied a request that did not precisely describe the records sought.

Open Records Decision

Between the dates of June 5, 2020, and December 1, 2020, inmate Randy Whitson (“Appellant”) submitted five open records requests to the Complex. The Complex denied each for various reasons. On January 4, 2021, this Office received Appellant’s request to appeal all five of the denials.¹

¹ The Complex argues that the Appellant did not timely appeal any of the denials. Under KRS 197.025(3), a person “confined in a penal facility shall challenge any denial of an open record with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial[.]” To determine whether an inmate has timely appealed, this Office considers the date the inmate mailed “the appropriate documents,” not the date this Office received them. Here, the exact date on which Appellant mailed this appeal is unknown. But he must have mailed the appropriate documents after December 2, 2020, because his appeal references denials that the Complex issued on that date. Because the first two denials occurred on June 6, 2020 and November 6, 2020, respectively, the Appellant needed to appeal those denials by June 26, 2020, and November 26, 2020, respectively. KRS 197.025(3). Thus, this Office is without jurisdiction to consider the appeals of those two denials.

The first of the Appellant's requests sought a copy of the legal mail log to the extent it referenced the Appellant. The Complex denied this request because the Appellant did not specify any temporal limitations. KRS 61.872(3)(b) requires that request precisely describe the records being sought. Under this provision, this Office has found that a request that lacks any temporal scope does not precisely describe the records sought. *See, e.g.,* 20-ORD-017; 15-ORD-212. Here, the Appellant failed to specify the dates or a date range for the legal mail log he sought, and therefore, his request was not precise enough to provide the Complex with the information needed to produce the documents requested. For that reason, the Complex did not violate the Act when it denied the Appellant's request for copies of the legal mail log.

The second request sought a copy of the regular mail log to the extent it referenced the Appellant. At first, the Complex denied this request for the same reason it denied the Appellant's first request. However, on appeal the Complex asserts that the Complex does not "maintain a log for regular mail." For that reason, the Complex does not possess records responsive to this request. Under KRS 61.880(1), a public agency that denies a request to inspect records must "include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." Because the Complex failed to identify the exception on which it relied to deny the Appellant's request, the Complex violated the Act.

Despite its initial violation of the Act, the Complex has since confirmed that the records sought do not exist. Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requestor to present a *prima facie* case that the requested records do exist in the agency's possession. *Bowling v. Lexington-Fayette Urb. Cty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Appellant has failed to make a *prima facie* case that the Complex maintains a mail log for non-legal mail. Thus, the Complex did not violate the Act when it denied the Appellant's request.

In his third request, the Appellant sought all "records, information, [and] matter" that relate to the Appellant, including a copy of Appellant's "Legal Aide Training Course 2017 Certificate." The Complex denied this request because the Appellant failed to include the money authorization form for the payment of fees. The Act provides that "[w]hen copies are requested, the custodian may require . . .

advance payment of the prescribed fee[.]” KRS 61.874(1). Kentucky courts have held that correctional facilities may charge inmates reasonable copying costs in providing copies of records under the Act. *See Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985). Thus, the Complex did not violate the Act in denying the Appellant’s request for a copy of “Legal Aide Training Course” certificate by first requiring that he submit the applicable copying fee.

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
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Distributed to:

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