



COMMONWEALTH OF KENTUCKY
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21-ORD-031

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In re: Christopher Hawkins/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (the “Penitentiary”) did not violate the Open Records Act (“the Act”) when it was unable to produce a record that did not exist in its possession.

Open Records Decision

Inmate Christopher Hawkins (“Appellant”) requested from the Penitentiary a copy of his resident record card and a theft report he claims to have filed with the Penitentiary. The Penitentiary denied both requests, and claimed that the report either does not exist or is not in its possession.

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 Urb. 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).

On appeal, the Appellant claims that he completed a stolen property form and delivered it to a specific Penitentiary employee. The Penitentiary claims that the employee is currently on an extended leave of absence, but that

it has searched the employee's desk and files, and that it cannot locate the report. The Penitentiary provides an affidavit from the property officer, who swears that he reviewed all theft reports that have been filed and that he could not locate the theft report that the Appellant seeks. Even if the Appellant has established a *prima facie* case that the Penitentiary should possess the theft report, the Penitentiary has provided sufficient evidence of an adequate search that turned up no responsive records. For this reason, the Penitentiary did not violate the Act.¹

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/Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Christopher Hawkins #103061
Amy Barker

¹ On appeal, the Penitentiary provided the Appellant with his updated resident card. Thus, any dispute about the Appellant's resident card is moot. 40 KAR 1:030 § 6.