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**21-ORD-057**

March 25, 2021

In re: Glenn Odom/Kentucky State Reformatory

***Summary:*** The Kentucky State Reformatory (the "Reformatory") did not violate the Open Records Act ("the Act") when it denied a request for records that do not exist.

***Open Records Decision***

Inmate Glenn Odom ("Appellant") sent two requests to receive copies of certain records from the Reformatory. Among the records that he sought were copies of a certain surveillance video, copies of certain suicide watch logs, and copies of certain correspondence he exchanged with Reformatory staff. After receiving no response from the Reformatory, the Appellant initiated this appeal.

On appeal, the Reformatory claims that it did not receive either of the Appellant's requests. In response to the coronavirus pandemic, the General Assembly passed Senate Bill 150 ("SB 150"), which provides that during the state of emergency and "[n]otwithstanding KRS 61.872 and 61.880, a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt." SB 150 § 1(8). SB 150 took effect on March 30, 2020. Accordingly, the Reformatory would have had ten days from the date on which it received the Appellant's requests to issue a written response. However, because it is not clear from the record that the Reformatory ever received the Appellant's request, this Office cannot find that the Reformatory failed to issue a timely response. *See, e.g.,* 20-ORD-134; 18-ORD-056; OAG 89-81.

On appeal, the Reformatory claims that it did not create suicide watch logs for the dates specified in the request. The Reformatory also claims that

the requested surveillance video was deleted automatically after seven days, in conformity with the Reformatory's records retention schedule.[1] Therefore, it claims that neither the requested suicide watch logs nor the surveillance video exists. Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to make 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).

Here, the Appellant has not made a *prima facie* showing that the requested suicide watch logs should exist for the dates specified. The Reformatory has also explained that the surveillance video was deleted after seven days, in conformity with its record retention schedule. Therefore, the Reformatory did not violate the Act when it denied the Appellant's request for records that do not exist.

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
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Distributed to:

Glenn Odom #219489
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[1] The reformatory provided the Appellant with copies of his correspondence with Reformatory staff. Therefore, this appeal is moot as to these records. See 40 KAR 1:030 § 6.