



COMMONWEALTH OF KENTUCKY
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21-ORD-068

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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 copies of records relating to a specific check clearing his inmate account. In a timely written response, the Penitentiary denied the request because the record either does not exist or is not in its possession.¹

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).

Here, the Penitentiary explains that the bank does not return cancelled checks to the Penitentiary. Penitentiary staff then accessed the bank account by logging onto the bank’s online server, but there was no record showing that

¹ The Appellant claims the Penitentiary never responded to his request, but the Penitentiary provided proof on appeal that it issued its response one day after the Appellant submitted his request.

the check had cleared the account at the time the request was made. Thus, even if the Appellant has established a *prima facie* case that such a check was issued, 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.

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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/s/Marc Manley
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Distributed to:

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