



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-083

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In re: Leonel Martinez/Office of the Governor

Summary: The Office of the Governor (the “Governor’s Office”) did not violate the Open Records Act (the “Act”) when its timely response to a request to inspect records was mailed to an incorrect address. The Governor’s Office also did not violate the Act when it did not produce records that did not exist in its possession.

Open Records Decision

Inmate Leonel Martinez (“Appellant”) requested from the Governor’s Office a copy of a taxi license issued to him in 2006 and a copy of records documenting former Governor Ernie Fletcher’s appointment of a specific Commonwealth’s Attorney. Although the Appellant’s name and inmate number appeared on the request, both were illegible. The Governor’s Office timely issued responses to both requests, but misspelled Appellant’s name and provided the wrong inmate number. Thus, the responses were returned to the Governor’s Office as undeliverable. Having never received responses from the Governor’s Office, the Appellant filed this appeal.

The Governor’s Office received the returned mail the same day the Appellant mailed his appeal to this Office. Once notified that its response had not been delivered, the Governor’s Office correctly identified Appellant and again responded to his requests. On these facts, this Office declines to find that the Governor’s Office violated the Act’s timeliness provision. *See* 11-ORD-008.

In its response, the Governor's Office explained that after a diligent search it could not locate the requested records. 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). Here, the Appellant has provided no basis to suggest that such documents do or should exist within the possession of the Governor's Office. Therefore, the Governor's Office did not violate the Act when it was unable to provide records that do not exist within its possession.

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
Marc Manley
Assistant Attorney General

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Distributed to:

Leonel Martinez #216925
Taylor Payne, Records Custodian, Office of the Governor