



COMMONWEALTH OF KENTUCKY  
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**21-ORD-085**

May 10, 2021

In re: Carlos Thurman/Northpoint Training Center

**Summary:** The Northpoint Training Center (the “Center”) did not violate the Open Records Act (“the Act”) when it did not provide a record that does not exist in its possession.

***Open Records Decision***

Carlos Thurman (“Appellant”) asked the Center to provide a copy of the search and frisk log for the second working shift on March 31, 2021, in which his name should appear.<sup>1</sup> In a timely response, the Center claimed that the requested record could not be located because the Appellant’s name does not appear in the log for the shift requested. This appeal followed.

A public agency cannot grant a requester access to a record that does not exist. *Bowling v. Lexington Urban County Government*, 172 S.W.3d 333, 341 (Ky. 2005). Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist in the agency’s possession. *Id.* at 341. If the requester is able to make 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 Fort 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* case that the Center possesses, or should possess, the record he seeks. Although he asserts that the Center searched him on March 31, 2021, he does not state at what time, or during which working shift, this search occurred. Moreover, although the

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<sup>1</sup> The second shift covers the period of 3:00 p.m. to 11:00 p.m.

Appellant claims that the Center's policy requires it to maintain a log of searches, he does not provide a copy of such policy. Instead, he claims that the policy requires that all searches of inmates be logged. But according to Department of Corrections Policy 9.8, only "strip searches" must be logged.<sup>2</sup> The Appellant has never claimed that he was "strip searched."

Even if the Appellant had made a *prima facie* case that the Center should possess the records requested, the Center has provided sufficient proof that it conducted an adequate search for these records. On appeal, the Center describes where it stores such logs and explains that it has "thoroughly reviewed" each log, but that there is "no entry" relating to the Appellant during the month of March. Therefore, the Center has carried its burden that it adequately searched for responsive records but such records do not exist within its possession.<sup>3</sup> Accordingly, the Center 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**  
**Attorney General**

/s/Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

Carlos Thurman #112192  
Krysta Nevels  
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<sup>2</sup> See Corrections Policy and Procedure 9.8, § 2.A.1.g, available at <https://corrections.ky.gov/About/cpp/Documents/09/ CPP%209.8.pdf> (last accessed May 10, 2021)

<sup>3</sup> The Appellant claims that the Center violated its policy by failing to document the search that he claims occurred. This Office does not, however, adjudicate such claims. See, e.g., 17-ORD-096; 14-ORD-083.