



COMMONWEALTH OF KENTUCKY
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21-ORD-106

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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 records that do not exist in its possession.

Open Records Decision

Inmate Christopher Hawkins (“Appellant”) requested records related to an incident in which he was involved that occurred at Northpoint Training Center in 1990 or 1991. In a timely response, the Penitentiary denied the request, explaining that such records either do not exist or are 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 Urban 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, Appellant asserts that the incident occurred, that he was treated by Northpoint Training Center staff, and that the other individual involved in

the incident was disciplined. Therefore, the Appellant claims that the records he requested should exist. In response, the Penitentiary explains that it reviewed medical records from the date range in question, which were archived and stored at an offsite location. But after a thorough examination of all such records, the Penitentiary was unable to locate any records responsive to Appellant's request. Accordingly, the Penitentiary has conducted an adequate search for responsive records, but has been unable to locate any such records. By conducting an adequate search for responsive records, the Penitentiary has discharged its duty under 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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Assistant Attorney General

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Distributed to:

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