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**21-ORD-109**

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In re: Carlos Thurman/Eastern Kentucky Correctional Complex

**Summary:** The Eastern Kentucky Correctional Complex (the “Complex”) did not violate the Open Records Act (“the Act”) when it was unable to produce a record that does not exist in its possession.

***Open Records Decision***

Inmate Carlos Thurman (“Appellant”) requested a copy of the video recording of his dreadlocks being cut at Northpoint Training Center. In a timely response, the Complex denied the request because no such recording could be located. The Complex further instructed Appellant to contact Northpoint Training Center to attempt to obtain a copy of the recording.

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 alleged that a video recording exists, but also admits that it is footage from Northpoint Training Center. He has not sufficiently demonstrated that the Complex should possess the requested record. Therefore, he has failed to establish a *prima facie* case that the requested records exist in the possession of the Complex.

Moreover, the Complex informed the Appellant that another public agency may be in possession of the record, and invited him to submit his request to that agency. In doing so, the Complex has discharged its duty under the Act. *See* KRS 61.872(4)

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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Assistant Attorney General

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Distributed to:

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