



COMMONWEALTH OF KENTUCKY
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21-ORD-120

June 30, 2021

In re: Levi Stewart/Jessamine County Detention Center

Summary: The Jessamine County Detention Center (the “Center”) violated the Open Records Act (the “Act”) by failing to timely respond to an inmate’s request for records, but did not violate the Act in failing to provide records not in its possession or control.

Open Records Decision

On March 1, 2021, inmate Levi Stewart (“Appellant”) sent to the Center a request for copies of various incident reports and his medical records from the time in which he was incarcerated at the Center. When the Center failed to respond, the Appellant filed this appeal.

Normally, a public agency must respond to an open records request within three business days. KRS 61.880(1). To address the novel coronavirus public health emergency, however, the General Assembly modified that requirement when it enacted Senate Bill 150 (“SB 150”), which became law on March 30, 2020, following the Governor’s signature. SB 150 provides, notwithstanding the provisions of the Act, “a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt.” SB 150 § 1(8)(a). Under KRS 446.030(1)(a), the computation of a statutory time period does not exclude weekends unless “the period of time prescribed or allowed is less than seven (7) days.” Accordingly, under SB 150, a public agency is required to respond to a request to inspect records within

ten calendar days. Here, the Appellant submitted his request on March 1, 2021, but the Center did not respond until June 3, 2021, and only after this appeal was initiated. Therefore, the Center violated the Act when it failed to issue a timely written response to the Appellant's request.

On appeal, the Center states that there are no records responsive to the Appellant's request in its possession. Once a public agency states affirmatively that requested records do not exist, 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 made no assertions as to why such records would presently be in the possession of the Center, and therefore has failed to make a *prima facie* case that such records do exist. But even if he had, the Center explains that the Appellant has been held three times at the Center: twice in 1997 and once in 2009. The Center further explains that, since the Appellant had been released from custody, the Center has relocated facilities and destroyed many documents in the process of that relocation. Therefore, even if the Appellant had presented a *prima facie* case that the requested records should exist, the Center has explained why such records do not exist in its possession. Accordingly, the Center did not violate the Act by not providing records not in its possession or control.

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.

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Distributed to:

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