



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

21-ORD-130

July 21, 2021

In re: Jeremy Henley/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 did not exist in its possession, or when it denied a request for records which did not make a specific reference to an inmate.

Open Records Decision

Inmate Jeremy Henley (“Appellant”) submitted a request to the Penitentiary for copies of various records. The Penitentiary denied all of his requests, and he filed this appeal.

The Penitentiary denied five of the Appellant’s requests because the requested records either do not exist or are not in the possession of the Penitentiary. 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, the Appellant requested an “entry/exit form” he allegedly signed, information regarding why the Penitentiary allegedly “shut[] off the water supply” to the Appellant’s cell, maintenance records pertaining to fixing

the access to water within thirty days of the problem originating, correspondence allegedly sent by the Appellant to the deputy warden regarding a grievance the Appellant submitted related to the water problem, and emails sent by Penitentiary staff to maintenance staff regarding water being turned off.¹ The Appellant has failed to produce any evidence that would indicate such records do in fact exist, and therefore, the Appellant has failed to make a *prima facie* case that such records do or should exist. Even if the Appellant had made a *prima facie* case that the requested records should exist, the Penitentiary has conducted an adequate search for any records responsive to the Appellant's requests, and has been unable to locate responsive records. Therefore, the Penitentiary did not violate the Act in failing to produce records which either do not exist or are not in its possession.

The Appellant also sought work orders submitted in July and August of 2019 pertaining to "11 Left Cell 19," and any work order fulfillments created by a specified engineer pertaining to such work orders. The Penitentiary denied his request because such records do not contain a specific reference to the Appellant. KRS 197.025(2) provides that the Penitentiary is not "required to comply with a request for any record from any inmate . . . unless the request is for a record which contains a specific reference to that individual." KRS 197.025(2). Because the requested work orders do not contain a specific reference to the Appellant, the Penitentiary did not violate the Act in failing to produce records responsive to this portion of the Appellant's request.

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.

¹ The Appellant also sought a copy of his grievance filed in August of 2019, regarding his water being shut off. In response to the Appellant's appeal, the Penitentiary conducted an additional search and located the requested grievance, and has provided a copy of it to the Appellant. Therefore, the Appellant's claim regarding these records is moot. 40 KAR 1:030 § 6.

21-ORD-130

Page 3

Daniel Cameron
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

#194

Distributed to:

Jeremy Henley # 260990
Amy V. Barker