



COMMONWEALTH OF KENTUCKY
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21-ORD-133

July 21, 2021

In re: Carlos Thurman/North Point Training Center

Summary: The North Point Training Center (the “Center”) did not violate the Open Records Act (“the Act”) when it was unable to produce records that did not exist in its possession.

Open Records Decision

Inmate Carlos Thurman (“Appellant”) submitted a request to the Center for a copy of a letter he allegedly sent to the deputy warden in May of 2021. The Center denied the request because the record either does not exist or is not in the Center’s 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, the Appellant has presented a copy of the outgoing mail log documenting that the letter was sent to the deputy warden on May 6, 2021. Even if such evidence was sufficient to establish a *prima facie* case that the letter should exist, the Center has explained the adequacy of its search for the letter. The Center explains that it has conducted multiple searches for the record in the Appellant’s inmate file, and it has contacted the deputy warden

about the letter. The deputy warden has confirmed that if the letter had been received, it would have been entered into KOMS, the database that contains inmate files. The Center has searched that database multiple times, but it has been unable to locate the requested record. Because the Center has searched all locations where the letter would be kept if it had been received, the Center has carried its burden to explain the adequacy of its search. *See, e.g.*, 21-ORD-031. Therefore, the Center did not violate the Act when it did not produce for inspection records that either do not exist or are not in its possession.

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:

Carlos Thurman # 112192
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