



COMMONWEALTH OF KENTUCKY  
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**21-ORD-171**

September 14, 2021

In re: Glenn Odom/Kentucky State Penitentiary

**Summary:** The Kentucky State Penitentiary (“Penitentiary”) did not violate the Open Records Act (“the Act”) when it failed to provide records that do not exist.

***Open Records Decision***

On July 27, 2021, inmate Glenn Odom (“Appellant”) requested a copy of all the “legal material request forms that [he] gave to [the Unit Administrator] regarding [his] legal property exchanges.” The Penitentiary provided copies of all legal material request forms submitted by the Appellant that it found in the legal library, but indicated that it could not find in the legal library, or in the property office, any such forms submitted by the Appellant in June or July 2021. This appeal followed.

The Appellant claims that the Penitentiary is concealing his request forms by maintaining them in the possession of the Unit Administrator instead of in their proper location. However, the Penitentiary has contacted the Unit Administrator, who states that he does not recall ever processing a legal material request form from the Appellant. Furthermore, the Unit Administrator “typically [does not] accept” such forms from inmates because processing those requests is the duty of the inmate’s case worker.

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 in the agency’s possession. *Bowling v. Lexington-Fayette Urban Cty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant merely asserts that the Unit Administrator possesses legal material request forms submitted by him, which the Unit Administrator denies. The

Appellant does not cite to any policy or regulation that requires the Unit Administrator to accept the form, and there is no evidence in this record that the form was submitted to the Unit Administrator. Therefore, the Appellant's assertion is insufficient to establish a *prima facie* case that the requested records exist. Therefore, the Penitentiary did not violate the Act.<sup>1</sup>

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 proceeding.

**Daniel Cameron**  
**Attorney General**

/s/ James M. Herrick

James M. Herrick  
Assistant Attorney General

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Distributed to:

Glenn Odom, #219489  
Amy V. Barker, Esq.  
Ms. Courtney Martin

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<sup>1</sup> The Appellant further argues that the Penitentiary should refund the fee he was charged for the records he received because they did not include the ones he wanted. However, this Office has no authority under the Act to compel the Penitentiary to reimburse the Appellant. See 21-ORD-152 n.1; 21-ORD-155 n.1.