



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

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In re: Leonel Martinez/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (“the Penitentiary”) did not violate the Open Records Act (“the Act”) when it denied a request to provide information or to provide a record that does not exist.

Open Records Decision

On August 25, 2021, inmate Leonel Martinez (“Appellant”) requested the Penitentiary’s “legal office schedule.” In a timely response, the Penitentiary denied the request, explaining that a “request for information is outside the scope of the open records law [and] an agency is not required to honor a request for information.” This appeal followed.

The Act does not require public agencies to fulfill requests for information, but only requests for records. KRS 61.872; *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”). Furthermore, on appeal, the Penitentiary has confirmed that there is “no written schedule for the hours of the legal office.” Once a public agency states affirmatively that it does not possess a responsive record, the burden shifts to the requester to present a *prima facie* case that the requested record does exist. *Bowling v. Lexington-Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not made a *prima facie* case that any such written schedule exists or should exist. Therefore, the Penitentiary did not violate the Act when it denied the Appellant’s request for the “legal office schedule.”

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/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distribution:

Leonel Martinez, #216925
Peter J. Klear, Esq.
Ms. Courtney Martin