



COMMONWEALTH OF KENTUCKY
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21-ORD-208

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In re: Matt Tucker/LaRue County Detention Center

Summary: The Larue County Detention Center (the “Center”) violated the Open Records Act (“the Act”) when it did not respond to a request for records. However, the Center did not violate the Act when it could not provide copies of records that do not exist within its possession.

Open Records Decision

On September 21, 2021, Matt Tucker (“Appellant”) submitted a request to the Center for copies of “phone records for the [Center] for outgoing [and] incoming phone calls” for three specific dates and times. On October 1, 2021, having received no response from the Center, the Appellant then appealed.

Upon receipt of a request under the Act, pursuant to KRS 61.880(1), an agency “shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” If an agency denies in whole or in part the inspection of any record its response must include “a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). Here, the Center did not respond to the Appellant’s request until after the appeal was initiated. Thus, the Center violated the Act.

On appeal, the Center responds and states affirmatively that it does not possess the records that the Appellant seeks. The Center explains that it “is unable to fulfill the current request because [the Center] do[es] not have the records and [is] not the authorized owner of the requested [telephone] account.”

Furthermore, that “[t]he LaRue County Detention Center does not maintain telephone records for the phone lines coming into and out of the jail facility.” Moreover, the Center claims that “the telephone line is supplied, and paid for, by the LaRue Fiscal Court. Any and all phone records of calls in and out are maintained by the telephone provider and not by the jail.” The Center also advised the Appellant that his “request needs to be made directly to LaRue County Fiscal Court.”

Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to present a *prima facie* case that requested records do exist in the possession of the public agency. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records do or should exist, then the public agency “may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

The Center claims it does not possess these records. To make a *prima facie* case that the Center should possess the records, the Appellant provides a copy of another request he submitted to the LaRue County Treasurer (“Treasurer”) and the Treasurer’s response denying the request. The Treasurer claimed she did not “have access to the phone records for the [Center]” and suggested that the Appellant “submit the request to the [Center].”

However, on appeal, the Center continues to claim that it does not possess the requested records. Moreover, it is not clear from this record whether the Appellant is seeking phone records of calls made or received by inmates, or whether he is seeking phone records associated with the Center’s employees. Based on other statements made by the Appellant in this record, it appears as though he seeks phone records associated with the Center’s employees. The Center should likely possess phone records associated with inmates, given that the maintenance of inmate financial accounts are generally administrated by local county jails. *See generally KRS 441.137*. On the other hand, fiscal courts are the public agencies responsible for financing the operations of local jails. *See generally KRS 441.025*. Neither the Appellant nor the Center directs this Office to any authority that specifies whether local jails or fiscal courts are responsible for paying telephone bills for non-inmate calls. Thus, this Office is unable to conclusively determine whether the Center or the LaRue County Fiscal Court is the custodian of the requested record.

Accordingly, this Office cannot find that the Center violated the Act when it did not produce records that it claims do not exist in its possession.¹

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/Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Matt Tucker
Kyle W. Williamson

¹ This Office notes, however, that either the LaRue County Fiscal Court or the Center should possess responsive records. Although this Office cannot resolve the factual dispute about which of the two agencies actually possesses the records, this Office encourages both of these public agencies to search for the records responsive to the Appellant's request.