



COMMONWEALTH OF KENTUCKY
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21-ORD-216

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In re: Carlos Thurman/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) violated the Open Records Act (“the Act”) when it failed to make a final disposition of an open records request, but the Complex did not violate the Act when it did not provide a record that does not exist.

Open Records Decision

On September 30, 2021, inmate Carlos Thurman (“Appellant”) requested a copy of a job application that he had allegedly “turned in for the month of Sept[ember] 2021.” In response, the Complex stated that the Appellant’s case worker could obtain a job application for him. This appeal followed.

On appeal, the Complex states that it “misread” the request and “mistakenly” referred the Appellant to his case worker to obtain an application form. Under KRS 61.880(1), a public agency must determine, within five business days, whether it will grant or deny a request for public records, and issue a written disposition of the request. The Complex violated the Act when it failed to grant or deny the Appellant’s request within five days.

The Complex further states that the Appellant submitted a job application in July 2021, but not in September 2021.¹ Therefore, the record

¹ The Complex claims that the Appellant did not submit a job application in the month of September. Rather, the Complex notes that the Appellant submitted a late application in July for a position that had been filled, but his application was considered for a position that became available in September.

that the Appellant has requested to inspect does not exist. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does exist. *Bowling v. Lexington-Fayette Urban Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not established a *prima facie* case that the alleged September 2019 job application exists. Therefore, the Complex did not violate the Act.

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 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

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