



COMMONWEALTH OF KENTUCKY
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21-ORD-233

December 1, 2021

In re: Michael Vaughan/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it required advance payment of fees pursuant to KRS 61.874(1) to provide all the records in its possession. This Office is unable to resolve factual disputes about whether a requester received a public agency’s response once the public agency provides proof that the response was mailed.

Open Records Decision

On July 26, 2021, Michael Vaughan (“Appellant”) submitted two requests to the Complex for records. First, the Appellant sought copies of all of the Complex’s outgoing and incoming legal mail logs for two specific periods of time. Second, the Appellant sought copies of six different “appeals” he filed with the Complex in which he alleged that his mail had been censored, and the warden’s responses to each of his “appeals.”¹ On October 22, 2021, the Appellant initiated this appeal and claimed that the Complex failed to respond to his requests.

Under KRS 197.025(7), a correctional facility must respond to an inmate’s request to inspect public records within five business days of receipt of the request. On appeal, the Complex claims that it received the Appellant’s requests on August 5, 2021 and issued responses the same day. As proof, the

¹ The Appellant does not explain what he was appealing. It is unclear whether he is referring to grievances he filed, or “appeals” of those grievances after they were denied.

Complex provided an undated letter that appears to be a response to the Appellant's request. This Office has historically found that it is unable to resolve factual disputes between a public agency and a requester, such as whether the requester has received the public agency's response to his request. *See, e.g.*, OAG 89-81; 03-ORD-172; 04-ORD-223; 08-ORD-066; 12-ORD-122; 21-ORD-163. Accordingly, even though the Complex's response was undated, this Office cannot find that the Complex failed to issue its response within five business days of receiving the Appellant's request.

In its August 5, 2021 response, the Complex claimed to have located all responsive records, and instructed the Appellant to provide payment of a prescribed fee and postage prior to providing copies of all responsive records. Under KRS 61.874(1), an agency "may require . . . advance payment of the prescribed fee, including postage where appropriate." Thus, the Complex did not violate the Act when it required the Appellant to pay copying and mailing costs in advance of receiving the responsive records.

On appeal, the Complex claims it can only locate responsive records for two of the six "appeals" that the Appellant identified. The Complex claims no other responsive records exist in its possession. 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).

Here, the Appellant claims he never received the Complex's response. Thus, he did not include any information in his appeal to make a *prima facie* case that he filed the four other "appeals," or that records responsive to these additional appeals exist. Regardless, the Complex explains that if these records existed, then such records would have been scanned into the Appellant's electronic inmate file stored in the Kentucky Offender Management System ("KOMS"). Moreover, the Complex explains that it has searched the KOMS, located two of the six alleged appeals, and was unable to locate responsive

records for the other four appeals that the Appellant claims to have filed. Accordingly, even if the Appellant had presented a *prima facie* case that such records exist in the Complex's possession, the Complex has adequately explained the method of its search and has affirmatively stated that no additional records exist. Therefore, the Complex did not violate the Act when it did not provide records that do not exist 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 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 emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Michael Vaughan, 282878
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