



COMMONWEALTH OF KENTUCKY
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21-ORD-239

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In re: James Harrison/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it did not provide a record that does not exist.

Open Records Decision

On September 20, 2021, inmate James Harrison (“Appellant”) requested to inspect records relating to his 2020 hearing before the Kentucky Parole Board, including a pre-parole progress report.¹ In a timely response, the Complex granted the Appellant’s request, but subsequently the Complex issued a supplemental response denying inspection of a pre-parole progress report on the grounds that “[p]re-parole progress reports are no longer used and ha[ve] been discontinued since 2015.” This appeal followed.

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 requested pre-parole progress report exists. Thus, the Complex did not violate the Act when it failed to provide the requested record.

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

¹ On appeal, the Complex states that the Appellant has inspected the requested records other than the pre-parole progress report. Accordingly, this appeal is moot as to those records. See 40 KAR 1:030 § 6.

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.

Daniel Cameron
Attorney General

/s/ James M. Herrick

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Assistant Attorney General

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Distributed to:

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