



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

21-ORD-242

December 7, 2021

In re: Shawntele Jackson/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) violated the Open Records Act (“the Act”) when it failed to conduct an adequate search for records, but did not violate the Act when it failed to provide records that do not exist.

Open Records Decision

On September 20, 2021, inmate Shawntele Jackson (“Appellant”) requested to inspect his medical records since January 2020. Upon inspection of the records, the Appellant asked to see his Health Service Request forms, also known as “sick call sheets,” which the Complex’s medical records secretary had forgotten to print out. In a second request dated September 30, 2021, the Appellant sought inspection and copies of his sick call sheets from the same time period. The Complex located four sick call sheets and provided them to the Appellant for inspection and copying. These consolidated appeals followed.

On appeal, the Appellant alleges that the Complex failed to provide “countless other sick call sheets.” Specifically, he identifies January 5, April 19, June 1, and June 9, 2021, as dates for which sick call sheets should exist. More generally, he claims that a sick call sheet should exist for every medical encounter during that time period. After these appeals were initiated, the Complex conducted another search of the Appellant’s records and located a sick call sheet for June 1, 2021, which it has offered to provide for the Appellant’s inspection. The Complex asserts that no other sick call sheets exist for the relevant time period.

Once a public agency states affirmatively that it does not possess additional responsive records, the burden shifts to the requester to present a

prima facie case that additional records do exist. *Bowling v. Lexington-Fayette Urban Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that records do or should exist, “then the agency may also be called upon to prove that its search was adequate.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

With regard to his first request, the Appellant has made a showing that the Complex initially failed to search for sick call sheets. Furthermore, with regard to his second request, the Appellant has made a showing that the Complex failed to locate the sick call sheet dated June 1, 2021. Thus, the Complex violated the Act in both cases by initially failing to conduct an adequate search for records. *See, e.g.*, 20-ORD-013; 21-ORD-178 (finding that an agency violated the Act when its “search was clearly insufficient to locate all responsive records”). However, the Appellant has not presented a *prima facie* case to support his assertions that “countless” other sick call sheets exist or that a sick call sheet should exist for every medical encounter. Thus, the Complex did not violate the Act when it failed to provide additional records that do not exist.

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.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

Shawntele Jackson, #200020

Peter J. Klear, Esq.

Ms. Kellie Ratliff