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21-ORD-249

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In re: James Harrison/Grayson County Detention Center

Summary: The Grayson County Detention Center (“the Center”) did not violate the Open Records Act (“the Act”) when it denied a request for records that does not exist in its possession.

Open Records Decision

On October 25, 2021, inmate James Harrison (“Appellant”) requested that the Center provide copies of records related to the Center’s policies regarding the provision of costs for medical treatment to inmates. In a timely response, the Center stated that no such policy exists in its possession, and that the authority on which it relies to recover co-payments from inmates for medical services is “derive[d] from the Federal Prisoner Health Care Copayment Act of 2000.” This appeal followed.

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, to establish his *prima facie* case, the Appellant relies on KRS 441.045(1), which states that “[t]he county governing body shall prescribe rules for the government, security, safety, and cleanliness of the jail and the comfort and treatment of prisoners[.]” Thus, the statute on which the Appellant relies applies to the “county governing body,” *i.e.*, the fiscal court.

See also KRS 441.025. The Appellant does not cite any statute requiring the Center to maintain a policy regarding the collection of co-payments for medical services, and the Center has cited the federal law on which it relies to collect co-payments. There is no evidence that the Center has drafted a policy that is separate and distinct from the federal law on which it relies to collect such payments. Because the Appellant has not presented a *prima facie* case that the requested policy exists, this Office cannot find that the Center violated the Act in denying the request.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 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 accepts notice of the complaint through e-mail to OAGAppeals@ky.gov.

Daniel Cameron
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/s/Marc Manley
Marc Manley
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Distributed to:

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¹ Moreover, even if such a policy did exist, the Appellant would not be entitled to receive a copy of it. Under KRS 197.025(2), correctional facilities such as the Center are not required to provide copies of records to inmates when the record does not make a specific reference to the inmate. *See, e.g.*, 21-ORD-247. Policies of general applicability typically do not make specific references to specific inmates.