



COMMONWEALTH OF KENTUCKY
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22-ORD-031

February 22, 2022

In re: Carl Adkins/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (the “Complex”) did not violate the Open Records Act (“Act”) when an employee other than the official records custodian responded to a request to inspect records on behalf of the Complex. The Complex cannot provide records that do not exist in its possession.

Open Records Decision

Inmate Carl Adkins (“the Appellant”) submitted two requests to the Complex to inspect records. For his first request, the Appellant sought a copy of “Notice of Unauthorized Mail from on or around August 28, 2021, regarding [the] rejection of photographs.” In a timely response, the mailroom supervisor responded on behalf of the Complex and stated that he had looked in the mailroom, as well as his office, but he could not “find anything.” For his second request, the Appellant sought “any and all documents” created by Complex employees between August 20 and August 28, 2021, concerning the Appellant’s “incoming mail (general correspondence) including but not limited to any mail that was rejected and considered ‘contraband.’” In a timely response, the mailroom supervisor again responded on behalf of the Complex and stated that the Complex had no documents concerning the Appellant’s incoming mail or any rejected correspondence. This appeal followed.

On appeal, the Appellant claims the Complex violated the Act because its records custodian did not respond on behalf of the Complex. Upon receiving a request to inspect records, a public agency must issue its response to the requester within five business days. KRS 61.880(1). “The response shall be issued by the official custodian *or under his or her authority*, and it shall constitute final agency action.” *Id.* (emphasis added).

By default, the agency's response must be issued by the agency's official records custodian. However, KRS 61.880(1) expressly authorizes any person to respond on behalf of public agency so long as the person is acting under the authority of the official records custodian. The Complex has not claimed that the mailroom supervisor lacked authority from the official records custodian to issue the Complex's responses. The Appellant sought records from the mailroom. The mailroom supervisor, *i.e.*, the employee most familiar with mailroom records, responded on behalf of the Complex to inform the Appellant that no responsive records existed. This conduct does not violate the Act.

Turning to the substance of the Complex's denial, 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). The Appellant has not attempted to make a *prima facie* case that the Complex possesses responsive records, nor has he expressly challenged the Complex's claim that no responsive records exist. Accordingly, this Office cannot find that the Complex violated 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 emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

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