



COMMONWEALTH OF KENTUCKY  
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**22-ORD-081**

April 28, 2022

In re: Michael Vaughan/Kentucky State Reformatory

**Summary:** The Kentucky State Reformatory (the “Reformatory”) violated the Open Records Act (“the Act”) when it failed to respond to a request under the Act within five business days of receipt. However, the Reformatory did not violate the Act when it could not provide records that do not exist within its possession.

***Open Records Decision***

On January 31, 2022, inmate Michael Vaughan (“Appellant”) submitted a five-part request to the Reformatory for various records relating to a specific Reformatory employee. First, he sought various discovery requests allegedly propounded on an attorney for the Department of Corrections representing the Reformatory employee, including a “Request for Admissions,” a “1st Request to Produce” certain documents that was issued on a different date, and a “2nd Request for Production” that was issued on a third date. The Appellant further specified that he sought “date-stamped copies” that reflected the date on which the Reformatory received these three discovery requests. The Appellant also requested “all mail logs for mail received by [the attorney] from” the Appellant for a specific period of time, as well as a copy of a “file/date stamped” copy of a federal subpoena issued to the Reformatory’s warden. On March 25, 2022, having received no response from the Reformatory, the Appellant initiated this appeal.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . after

the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” Here, on appeal, the Reformatory admits that although it received the Appellant’s request, it inadvertently failed to respond timely. Thus, the Reformatory violated the Act.

On appeal, the Reformatory states affirmatively that it does not possess any records responsive to any of the five parts of the Appellant’s request. 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 could not make a *prima facie* case, since the Reformatory did not respond to his request until after his appeal was initiated. However, on appeal, the Reformatory explains that the attorney representing the Reformatory employee informed the Reformatory that “date-stamped copies” of the three discovery requests “do not exist.” Moreover, the Reformatory explains that “the Office of Legal Services does not create mail logs,” so the Reformatory did not possess records responsive to the fourth part of the Appellant’s request. Finally, the Reformatory states “that the Office of Legal Services does not possess a date stamped copy of a federal subpoena issued to” the Reformatory’s warden, so the Reformatory did not possess a record responsive to the fifth part of the Appellant’s request. Thus, the Reformatory has sufficiently explained that it does not possess date-stamped copies of the records, which were the records that the Appellant specifically described. Accordingly, this Office cannot find that the Reformatory violated the Act when it denied the Appellant’s request for “date-stamped copies” of records that the Reformatory claims do not exist.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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:

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