



COMMONWEALTH OF KENTUCKY
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22-ORD-084

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In re: Chris Hawkins/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (“the Penitentiary”) did not violate the Open Records Act (“the Act”) when it denied an inmate’s request for records that do not exist.

Open Records Decision

On March 8, 2022, inmate Chris Hawkins (“Appellant”) requested copies of all e-mails between a Licensed Psychological Associate (“LPA”) and a Correctional Lieutenant “regarding [the Lieutenant]’s putting false quotes in disciplinary report investigations (such as in DR #KSP-2021-0000172) alleged by [the Lieutenant] to have been made by [the LPA].” The Penitentiary denied the request on the grounds that no responsive records existed, explaining that the LPA had conducted a search for responsive e-mails and found none. This appeal followed.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that responsive records do exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant alleges that responsive e-mails between the LPA and the Lieutenant must exist because there are e-mails addressed to other individuals in which the LPA inquires about removing a “mental health opinion template” from the Appellant’s disciplinary reports. On appeal, the Penitentiary provides an e-mailed statement from the Lieutenant, who advises that she and the LPA spoke about the matter of the mental health opinion template, rather than conducting an exchange by e-mail. Thus, even if the Appellant had made a *prima facie* case that responsive e-mails should exist, it has been rebutted by both parties to the exchange, who have confirmed that no such records were created.

Therefore, the Penitentiary did not violate the Act when it denied the Appellant's request.

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

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Assistant Attorney General

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Distributed to:

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