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22-ORD-147

July 5, 2022

In re: Shawn Pursley/Northpoint Training Center

Summary: Northpoint Training Center (“the Center”) violated the Open Records Act (“the Act”) when it failed to issue a timely response to a request. The Center did not violate the Act when it did not provide records that do not exist.

Open Records Decision

On May 16, 2022, inmate Shawn Pursley (“Appellant”) requested that the Center provide a copy of the “results” of a urine test on December 3, 2021; a body scan on December 28, 2021; and strip searches conducted between December 3, 2021, and March 10, 2022. He stated that all of these items should appear in a daily log. In a response dated May 26, 2022, the Center asserted that the strip search logs for the dates indicated had no entry for the Appellant. With regard to the urine test, the Center stated that no entry was made in the log because the test was negative. The Center further stated that the Appellant’s body scan would not be provided because the disclosure of “information concerning the capabilities of the scanning equipment potentially allowing insights to elude the detection of contraband” would pose a security risk under KRS 197.025(1). This appeal followed.

Under KRS 61.880(1) and KRS 197.025(7), a correctional facility must respond within five business days after receipt of a request for records. Having received the Appellant’s request on May 16, 2022, the Center was obligated to respond by May 23, 2022. By failing to issue a timely response, the Center violated the Act.

On appeal, the Center reiterates that there are no log entries for a strip search or urine test of the Appellant during the specified time period. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does exist. *See Bowling v.*

Lexington-Fayette Urb. Cnty. Gov., 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has established that a urine test was performed, but the Center has explained the absence of a log entry by stating that negative urine tests are not logged. With regard to strip searches, Corrections Policy and Procedure (“CPP”) 9.8(II)(A)(1)(g)¹ requires strip searches to be documented in a logbook, except for searches conducted when an inmate enters or exits the institution, the visiting area, or an area to which inmate access is limited. The Appellant lists six occasions when he claims he was subjected to strip searches during the relevant time period, but it is unclear whether these would have been subject to the documentation requirement, and the Center continues to assert that no log entries exist. Thus, the Appellant has not established a *prima facie* case that the requested log entries exist.

On appeal, the Appellant clarifies that he did not request a copy of the body scan itself,² but rather the “results.” The Appellant asks this Office “to Order [*sic*]” the officers involved to make written statements about their findings. Likewise, the Appellant asks that this Office order officers to write statements concerning their findings regarding the urine test and strip searches. The Act, however, does not require a public agency to fulfill a request for information, *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013), or to create a record that does not already exist. *See, e.g.*, 21-ORD-046. Therefore, the Center did not violate the Act when it did not provide written statements or log entries 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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Distribution:

¹ See <https://corrections/ky.gov/About/cpp/Documents/09/ CPP%209.8.pdf> (last accessed June 24, 2022).

² Accordingly, it is unnecessary to decide whether KRS 197.025(1) applies to body scans.

Shawn Pursley, #166730

Amy V. Barker, Esq.

Ms. Lisa Douglas