COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

22-ORD-181

September 6, 2022

In re: Matthew Williams/Warren County Regional Jail

Summary: The Warren County Regional Jail (the "Jail") did not violate the Open Records Act ("the Act") when it denied a request for a record that does not exist within its possession.

Open Records Decision

Matthew Williams ("Appellant") submitted a request to the Jail for a copy of his "inmate account records" from February 2015 to the present date. In a timely response, the Penitentiary denied his request because no responsive records exist within its possession. This appeal followed.

On appeal, the Jail again states affirmatively that no records responsive to the Appellant's request exist within its possession. 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 has not established a *prima facie* case that the requested record exists. Therefore, the Jail did not violate the Act when it did not provide the requested account records. Furthermore, even if the Appellant had established a *prima facie* case, the Jail sufficiently explains on appeal that the inmate account records requested by the Appellant were destroyed in conformity with the Jail's

record retention schedule. The Jail explains that in accordance with State Records Retention Schedule – Series L2687, "[i]nmate [a]ccount records are only retained two (2) years after the release of inmate and audit." The Appellant was released from the Jail over five years ago, on March 17, 2017. Thus, even if the Appellant had established a *prima facie* case that responsive records should exist, the Jail has adequately explained why the records do not exist. Therefore, the Jail did not violate the Act.

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/Marc Manley
Marc Manley
Assistant Attorney General

#283

Distributed to:

Matthew Williams #285859
Stephen Harmon
Major Jason Rigsby
Amy Milliken