



COMMONWEALTH OF KENTUCKY  
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**22-ORD-222**

October 20, 2022

In re: Brandon Dawson/Eastern Kentucky Correctional Complex

**Summary:** The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

***Open Records Decision***

Inmate Brandon Dawson (“Appellant”) submitted a request to the Complex for copies “of [his] parole hearing, what was said, and the transcript from the hearing.” The Complex denied the request under KRS 439.510 and KRS 61.878(1)(l). This appeal followed.

On appeal, the Complex states that, although it initially denied the request under KRS 439.510 and KRS 61.878(1)(l), none of the requested records actually exist in the Complex’s possession. 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). 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 records exist. Even if the Appellant had established a *prima facie* case, the Complex sufficiently explains on appeal that the records requested by the Appellant do not exist. According to the Complex, the Appellant received a “file review” rather than a full hearing. As a result, there is no audio recording nor transcript for the Complex to produce. See, e.g., 22-ORD-137 (explaining that certain categories of offenders receive a “file review” instead of “face-to-face hearings”). Thus, even if the Appellant had

established a *prima facie* case that responsive records should exist, the Complex has adequately explained why the records do not exist. Therefore, the Complex did not violate the Act when it did not produce records that do not exist.<sup>1</sup>

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/ Zachary Zimmerer  
Zachary Zimmerer  
Assistant Attorney General

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Distributed to:

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<sup>1</sup> Accordingly, it is unnecessary to decide whether KRS 439.510 and KRS 61.878(1)(l) apply to a parole hearing audio recording or transcript.