



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

24-ORD-154

July 2, 2024

In re: Makeda Charles/Louisville-Jefferson County Department of Corrections

Summary: The Louisville-Jefferson County Department of Corrections (“the Department”) did not violate the Open Records Act (“the Act”) when it notified a requester that it was not the custodian of records for the record sought and provided the requester with the contact information of the records custodian of the agency likely to possess the requested record. The Department also did not violate the act when it denied a request under KRS 197.025(1) for security footage that if released would constitute a security threat. Finally, the Department did not violate the Act when it did not provide records that do not exist.

Open Records Decision

Makeda Charles¹ (“Appellant”) submitted a multi-part request to the Department for records relating to her arrest.² In response, the Department stated that it was not the custodian of the original police report, that video records of “all

¹ The Office takes notice of its decision in 24-ORD-135 involving another appeal initiated by the Appellant. Based on the record developed in that appeal, the Office found that the Louisville Regional Airport Authority did not violate the Act when it denied a request for records because the Appellant is not a resident of the Commonwealth. The Act only gives a “resident of the Commonwealth” the statutory right to demand access to public records. KRS 61.872(2)(a). It does not, however, prohibit nonresidents from obtaining public records. Rather, “[t]he official custodian *may* require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).” *Id.* (emphasis added). Here, the Department has not challenged the Appellant’s status as a “resident of the Commonwealth.” Thus, that issue is not properly before the Office and its decision in 24-ORD-135 is not dispositive here.

² Specifically, the Appellant sought “the complete file” related to “the original police report” including “all booking paperwork[,] all court orders[,] and court records, and all discharge paper work, and grievances and letters.” The Appellant also sought video of a nurse reading from a police report to the Appellant, video of the Appellant being transferred to Central State Hospital, the body cam footage of a specific individual transporting the Appellant to Central State Hospital, video of “all booking” at the Department after the Appellant returned from Central State Hospital, and video of the Appellant “in fresh arrest” in her dorm and in solitary confinement.

booking” in the Department’s booking area was exempt under KRS 197.025(1), and that it did not possess video records responsive to any other part of the Appellant’s request.³ This appeal followed.

“If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.” KRS 61.872(4). The Department notified the Appellant that it is not the custodian of the original police report created by the Airport Police Department for the Louisville Muhammad Ali International Airport. The Department further informed the Appellant that the Louisville Regional Airport Authority is the custodian of the police report and provided her with the Authority’s contact information. As such, the Department discharged its duty under KRS 61.872(4) with respect to the police report.

Under KRS 197.025(1), “no person shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.”⁴ This Office has historically deferred to the judgment of the correctional facility in determining whether the release of certain records would constitute a security threat. The Office has upheld the denial of security footage multiple times under KRS 197.025(1). *See, e.g.*, 23-ORD-089; 18-ORD-074; 13-ORD-022; 10-ORD-055. The release of security footage poses a security risk because it may disclose the “methods or practices used to obtain the video, the areas of observation and blind spots for the cameras.” *See, e.g.*, 22-ORD-038; 17-ORD-211; 15-ORD-121; 13-ORD-022.

Here, the Department explained that the video footage can be used “to assess the technology and/or procedures used by [the Department] and other law enforcement agencies in the management of inmates, it may be viewed to develop strategies used to overtake [the Department’s] staff . . . and the footage can be used to study the camera’s range of sight.” Accordingly, the Department did not violate the Act when it withheld video footage of the booking area because it has adequately explained how KRS 197.025(1) applied to the records withheld.

³ On appeal, the Appellant only claims she should have received the “original police report” and the requested video footage. She has not challenged any other part of the Department’s response.

⁴ KRS 197.025(1) is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly[.]”

On appeal, the Department maintains that it does not possess video footage responsive to the remaining subparts of the Appellant's request. 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 or should exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes 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 made a *prima facie* case that the Department possesses records responsive to her request. Instead, she simply asserts that “[e]lectronic files can be found easily and are never destroyed.” The Office has previously found that a requester's bare assertion that records exist is not sufficient to establish a *prima facie* case that the records actually do exist. See, e.g., 23-ORD-335; 22-ORD-040. Accordingly, the Department did not violate the act when it did not provide records it does not possess.

A party aggrieved by this decision may appeal it by initiating an 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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

#265

Distributed to:

Makeda Charles

Alice Lyon

Nicole Pang

Natalie S. Johnson

Annale Taylor

Tauheedah El-Saadiq