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-182

August 21, 2024

In re: Laron Cobb/Lee Adjustment Center

Summary: The Lee Adjustment Center ("the Center") violated the Open Records Act ("the Act") when it failed to respond to a portion of a request. However, the Center did not violate the Act when it produced all responsive records it possesses.

Open Records Decision

Inmate Laron Cobb ("Appellant") submitted a request to the Center for "documents related to an incident involving" him, "including but not limited to any incident and/or occurrence reports." The Appellant also requested a copy of any documents related to a particular disciplinary report. In response, the Center granted the request, stating, "Requested copies attached." This appeal followed.

On appeal, the Appellant states that the Center produced a disciplinary report but did not produce any incident or occurrence reports or affirmatively state that no such reports exist. Upon receiving a request for records under the Act, a public agency "shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision." KRS 61.880(1). If an agency denies in whole or in part the inspection of any record, its response must include "a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." *Id*. A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090. If the requested records exist and a statutory exception applies that allows an agency to deny inspection, the agency must cite the exception and explain how it applies. Conversely, if the records do not exist, then the agency must affirmatively state that such records do not exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Center failed to respond to the Appellant's request for "incident and/or occurrence reports" related to a specific incident. Thus, the Center violated the Act.

On appeal, the Center affirmatively states that it has provided all records in its possession and that a responsive incident or occurrence report does not exist. Once a public agency states affirmatively that it does not possess any additional records, the burden shifts to the requester to present a *prima facie* case that additional records do exist. *See Bowling*, 172 S.W.3d at 341. If the requester establishes a *prima facie* case that additional records do or should exist, "then the 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). To support a claim that the agency possesses responsive records it did not provide, the Appellant must produce some evidence that calls into doubt the adequacy of the agency's search. *See, e.g.*, 95-ORD-96.

Here, the Appellant has not made a *prima facie* case that the Center possesses any incident or occurrence reports related to the identified incident. Therefore, the Center did not violate the Act when it did not provide them.

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

#328

Distributed to:

Laron Cobb #155184
Kristy Hale
Daniel Akers
G. Edward Henry, II