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OFFICE OF THE ATTORNEY GENERAL

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25-ORD-005

January 7, 2025

In re: Glenn Odom/Oldham County Detention Center

Summary: The Oldham County Detention Center (“the Center”) did not violate the Open Records Act (“the Act”) when it did not provide records it does not possess. The Office cannot resolve the factual dispute regarding when the Center received the Appellant’s request.

Open Records Decision

On October 29, 2024, Glenn Odom (“the Appellant”) submitted a multi-part request to the Center seeking (1) emails and memos the Kentucky State Penitentiary (“the Penitentiary”) sent to the Center prior to the Appellant’s arrival at the Center regarding his “recommended housing area, [his] status, and [his] possible behavior”; and (2) “emails, notes, letters, [and] memos” from the Center to the Penitentiary “regarding [his] behavior.”¹ In response, on November 14, 2024, the Center stated that records responsive to subparts 1 and 2 of the request do not exist. This appeal followed.

Under KRS 61.880(1), 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” (emphasis added). Here, the Appellant asserts he sent his request to the Center by U.S. mail on October 29, 2024, and that he did not receive a response until November 14, 2024. On appeal, the Center asserts it received the request on November 9, 2024, and timely responded on November 14, 2024, the third business day following receipt of the request. The Office has consistently found it is unable to resolve factual disputes between a requester and a public agency, such as when an agency received a request to inspect records. *See, e.g.*, 24-ORD-184; 23-ORD-092; 23-ORD-071; 23-ORD-005; 22-

¹ The Appellant sought three additional categories of records which were provided and are not at issue in this appeal.

ORD-216; 22-ORD-148; 22-ORD-125; 22-ORD-100; 22-ORD-051; 21-ORD-163. Therefore, the Office is unable to resolve this factual dispute or find that the Center violated the Act.

On appeal, the Center affirms that records responsive to subparts 1 and 2 of the Appellant's request do not exist. 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 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 additional records exist. Therefore, the Center 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
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Assistant Attorney General

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