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25-ORD-006

January 7, 2025

In re: Glenn Odom/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary ("the Penitentiary") did not violate the Open Records Act ("the Act") when it provided all responsive records it possesses.

Open Records Decision

Inmate Glenn Odom ("Appellant") submitted a request to the Penitentiary containing three subparts. First, he requested "all e-mails [and] memos" sent by the Penitentiary "to the Oldham Co[unty] Jail about [him] prior to [his] arrival[.]" Second, he requested "all e-mails [and] memos" sent by the Oldham County Jail to the Penitentiary "regarding [his] alleged behavior while housed at that jail[.]" Third, he requested "a copy of the e-mail that [the Penitentiary] sent to" the Kentucky Correctional Psychiatric Center ("KCPC") regarding his "status" and other related issues. The Penitentiary granted the request and made 12 pages of responsive records available to the Appellant upon payment of a $0.10 per page copying fee. Having claimed that the Penitentiary possesses additional responsive records that it did not provide, the Appellant initiated this appeal.

On appeal, the Penitentiary affirmatively states that it has provided the Appellant with all responsive records and that no other responsive records 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 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 attempts to make a *prima facie* case for each subpart of his request by asserting that staff at the Oldham County Jail and KCPC "verified" that additional responsive records exist. However, the Appellant has not provided proof for these assertions he makes regarding the existence of additional responsive records and the Penitentiary's alleged failure to provide them. A requester's bare assertion that an agency must possess requested records is insufficient to establish a *prima facie* case that the agency actually possesses those records. *See, e.g.*, 22-ORD-040. Instead, to present a *prima facie* case that additional responsive records exist and that the agency possesses or should possess those records, the requester must provide some statute, regulation, or factual support for that contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. Accordingly, the Appellant has not established a *prima facie* case that additional responsive records exist or that the Penitentiary should possess them. Accordingly, the Office cannot find that the Penitentiary violated the Act when it provided all records responsive to a request that exist within its possession.

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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