



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-093

April 3, 2025

In re: Darian Mathews/Lee Adjustment Center

Summary: The Lee Adjustment Center (“the Center”) did not violate the Open Records Act (“the Act”) when it denied a request for records that it does not possess.

Open Records Decision

Inmate Darian Mathews (“Appellant”) submitted a request to the Center for records related to his parole board hearing.¹ The Center denied the request because it was “unable to produce the documents requested,” but it provided the names and contact information for two agencies that might possess the records. This appeal followed.

Both initially and on appeal, the Center states that it does not possess the requested records. 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’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).

To make a *prima facie* case that the agency possesses or should possess the requested record, the requester must point to some statute, regulation, or factual support for this contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. Here, in an effort to show that the Center should possess the requested records, the Appellant provided a copy of a denial letter from the Kentucky Parole Board (“the Board”) in response to a

¹ Specifically, the Appellant requested the “notice of probable cause hearing,” the “probable cause record,” the “final hearing determination,” and a “copy of [the] parole board decision.”

similar request for records.² The Board denied the request because it did not possess the requested records and stated that the Kentucky Department of Corrections (“DOC”) may possess them. The Board cited CPP 6.2(II)(A)(1), which states that “the official inmate record shall be maintained in the Kentucky Offender Management System” (“KOMS”) and that the custodian of those records is the DOC.³

Thus, although the Appellant has provided some evidence that the DOC maintains his inmate record in KOMS, he has not provided any evidence that the particular records he requested exist within his inmate record or that the Center possesses those records. Accordingly, the Appellant failed to make a *prima facie* case that the requested records exist and are in the possession of the Center.⁴ Moreover, even if the Appellant had made a *prima facie* case that the Center possesses the requested records, the Center explains on appeal that the records were not found in its possession or in KOMS. Accordingly, the Office cannot find that the Center violated the Act when it could not produce records that it does not possess.⁵

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

² The Board’s response states that the Appellant had requested a notice of a probable cause hearing, revocation hearing date, and a copy of the final revocation hearing.

³ See Corrections Policy and Procedure (“CPP”) 6.2, available at <https://corrections.ky.gov/About/cpp/Documents/06/CPP%206.2%20Effective%202025%20-%2024-25%20REG%20540.pdf> (last accessed March 27, 2025).

⁴ On appeal, the Center asserts it “is a private prison owned and operated by CoreCivic, Inc.” and is “not the equivalent of the Kentucky Department of Corrections.”

⁵ The Appellant makes several assertions about the Board’s response to a different request. Because that request was not provided as a part of this appeal, the Board’s denial is not properly before the Office. See KRS 61.880(2)(a).

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Distributed to:

Darian Mathews #218923

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