



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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25-ORD-095

April 3, 2025

In re: Christopher Peyton/Roederer Correctional Complex

Summary: The Roederer Correctional Complex (“the Complex”) violated the Open Records Act (“the Act”) when it failed to issue a response within five business days of receiving it. The Complex did not violate the Act when it did not provide records it does not possess.

Open Records Decision

On January 13, 2025, inmate Christopher Peyton (“Appellant”) submitted a request to the Complex seeking all his “receipts for property orders, Blick orders, and book orders” from the time he was incarcerated at the Complex. In response, on February 18, 2025, the Complex provided responsive records. Alleging the Complex had not timely responded to his request and did not provide all responsive records, 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.” Here, the Complex admits that it received the Appellant’s request on February 7, 2025, but did not respond until February 18, 2025. It “concedes it did not respond within five business days,” and therefore, violated the Act.

On appeal, the Complex maintains it has provided all responsive records it possesses to the Appellant. Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do or should exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that 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). Similarly, once a public agency claims to have provided all responsive records, the burden shifts to the requester to make a *prima facie* case that additional records exist because, in essence, the agency has denied the existence of additional records.

On appeal, the Appellant states only that the Complex did not “provide copies of receipts for any of the property orders [he] received while” located at the Complex. A requester’s mere assertion that records should exist does not establish a *prima facie* case that they do. *See e.g.* 24-ORD-027. Accordingly, the Office cannot find that the Complex violated the Act when it provided all responsive records in its possession to the Appellant.

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

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Distributed to:

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