**18-ORD-165**

August 23, 2018

In re: Leonel Martinez/Little Sandy Correctional Complex

***Summary***: Little Sandy Correctional Complex did not violate the Open Records Act where it provided responsive records to the inmate requester, mooting the inmate’s appeal. Nor did Little Sandy Correctional Complex violate the Act when it did not provide records it did not possess.

***Open Records Decision***

The question present in this appeal is whether Little Sandy Correctional Complex (“LSCC”) violated the Open Records Act in its disposition of inmate Leonel Martinez’s open records request, dated July 16, 2018, for certain medical records and information pertaining to him and the medical provider that prepared the records. For the following reasons we find no violation of the Act.

On July 16, 2018, Martinez submitted an open records request to LSCC for a certain medical report, objecting to certain aspects of the medical report, and requesting information related to the medical provider who prepared the report. On July 18, 2018, LSCC responded, denying Martinez’s request on the grounds that the records requested were not the type of records that would contain a specific reference to the inmate pursuant to KRS 61.878(1)(l) and KRS 197.025(2). On July 20, 2018, Martinez initiated this appeal.

After receipt of Martinez’s appeal, LSCC conducted an additional search for the medical record connected to the specific medical history to which Martinez objects. As a result, a medical record was located, which had originated at Eastern Kentucky Correctional Complex (“EKCC”). The LSCC subsequently provided the medical record/report to Martinez.

As a result, to the extent Martinez’s appeal seeks the production of the medical report provided that LSCC provided to him, his appeal is moot. *See* 40 KAR 1:030. Pursuant to 40 KAR 1:030, Section 6, “If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.” *See* OAG 91-140 (holding, “If access to the public records for which inspection or copying is sought is initially denied and then subsequently granted, the issue of the propriety of the initial denial becomes moot”).

Moreover, LSCC states that the “records containing personal information and the license of the provider are not possessed by LSCC since the medical record at issue originated at EKCC.” It is well-settled that a public agency “cannot afford a requester access to a record record that it does not have or which does not exist.” *See* 07-ORD-190, 06-ORD-040, 99-ORD-98, 09-ORD-129. The agency discharges its duty under the Open Records Act by affirmatively so stating. 99-ORD-150, 04-ORD-43, 09-ORD-088, 14-ORD-072, 14-ORD-094, 15-ORD-046. An agency is not required to “prove a negative” when explaining that it does not have a record or that it does not exist. 11-ORD-209, p. 1, 5.In the instant appeal, LSCC affirmatively advised that it provided Martinez with the only responsive document in its possession and that it possessed no other responsive documents. Accordingly, we find no violation of the Act.

Moreover, even if LSCC had responsive records containing “personal information and the license of the provider[,]”such records are not the type of records that would contain a specific reference to the inmate pursuant to KRS 61.878(1)(l) and KRS 197.025(2), and would further be appropriately denied for privacy reasons pursuant to KRS 61.878(1)(a). As a result, we find LSCC properly denied Martinez’s request.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court per KRS 61.880(5) and KRS 61.882. Pursuant to 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 proceeding.

Andy Beshear

Attorney General

Sam Flynn

Assistant Attorney General

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cc: Amy V. Barker

Beth Harper, LSCC