



COMMONWEALTH OF KENTUCKY
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22-ORD-024

February 16, 2022

In re: Glenn Odom/Kentucky State Reformatory

Summary: The Kentucky State Reformatory (the “Reformatory”) did not violate the Open Records Act (“the Act”) when it required advance payment of fees to provide the only record that existed in its possession. This Office is unable to resolve the factual dispute between the parties as to whether the requester received the public agency’s response once the public agency provides proof it transmitted its response.

Open Records Decision

On December 23, 2021, inmate Glenn Odom (“Appellant”) submitted a request to the Reformatory for a copy of a record he signed on or about March 1, 2020 refusing protective custody. On January 10, 2022, the Appellant claimed he received no further response from the Reformatory and this appeal followed.

Under KRS 197.025(7), a correctional facility must respond to an inmate’s request to inspect public records within five business days of receipt of the request. On appeal, the Reformatory claims to have never received the request that the Appellant attached to his appeal, and that it instead received a similar but slightly different request dated December 21, 2021. The Reformatory claims to have received that request on December 28, 2021, and issued its response on January 3, 2022. The Reformatory submits as proof a copy of its response to the Appellant dated January 3, 2022. Historically, this Office has found that it is unable to resolve factual disputes between a requester and a public agency, such as whether or not a requester received a

response to his request. *See, e.g.*, 21-ORD-233; 21-ORD-163. Accordingly, this Office cannot find that the Reformatory failed to issue its response within five business days of receiving the Appellant's request.

In its response on appeal, the Reformatory claims that it found the Appellant's signed refusal of protective custody, consisting of one page. The Reformatory states that pursuant to KRS 61.874, it would require the prepayment of copying fees at 10 cents a page plus postage of 51 cents, or a total of 61 cents before it would provide the Appellant with the responsive record. Under KRS 61.874(1), an agency "may require . . . advance payment of the prescribed fee, including postage where appropriate." Accordingly, the Reformatory did not violate the Act when it required the Appellant to pay for copying fees and postage before he could receive the responsive record.

Although the Reformatory claims it found one record documenting the Appellant's refusal of protective custody, the Reformatory claimed it was "unable to locate any conflict resolution signed by" the Appellant.¹ 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 requested records do exist in the possession of the public agency. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 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 attempted to establish a *prima facie* case that the conflict resolution record he seeks exists in the possession of the Reformatory. Therefore, this Office cannot find that the Reformatory violated the Act when it claims it could not provide a record that does not exist within its possession.

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

¹ In the request the Appellant submits as part of his appeal, he only requested a copy of his signed refusal for protective custody. However, the request the Reformatory claims to have received from the Appellant also sought records related to "conflict resolution" of the incident.

within 30 days from the date of this decision. 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 proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/Matthew Ray
Matthew Ray
Assistant Attorney General

#024

Distributed to:

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Peter J. Klear