



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-051

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In re: Taquan Neblett/ Kentucky State Reformatory

Summary: The Kentucky State Reformatory (“the Reformatory”) did not violate the Open Records Act (“the Act”) when it did not provide a record that does not exist.

Open Records Decision

On February 16, 2022, inmate Taquan Neblett (“Appellant”) allegedly submitted a request for an “[i]temized receipt of all co-pay charges for lidocaine patches to date.” After receiving no response, the Appellant initiated this appeal.

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 that it never received the Appellant’s request. This Office is unable to resolve factual disputes between a requester and a public agency, such as whether the agency received a request. *See, e.g.*, 21-ORD-163. Therefore, this Office cannot find that the Reformatory violated the Act when it did not respond to a request it claims to have never received.

The Reformatory further states that no record exists which contains an itemized list of co-pay charges for medications because the Reformatory does not maintain information in that way.¹ 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. *Bowling v.*

¹ The Act does not require a public agency to “gather and supply information not regularly kept as part of its records.” *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013).

Lexington-Fayette Urb. Cnty. Gov., 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not established a *prima facie* case that the requested record exists. Therefore, the Reformatory did not violate the Act when it did not provide the requested list.

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 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 e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/ James M. Herrick

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Distribution:

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