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22-ORD-118

May 31, 2022

In re: Anthony Sadler/Little Sandy Correctional Complex

Summary: The Little Sandy Correctional Complex (the "Complex") violated the Open Records Act ("the Act") when it failed to issue a response to a request within five business days. However, it did not violate the Act when it could not produce for inspection a copy of a record that does not exist within its possession.

Open Records Decision

On April 4, 2022, Inmate Anthony Sadler ("Appellant") submitted a standard health information request form to the Complex to view his health information. In the space provided for the Appellant to describe "other" medical records, the Appellant asked to inspect any and all Medicaid "information," including any and all forms that he had signed or that were signed by anyone on his behalf. He also asked for his "letter rescinding permission for authorization to [his] [M]edicaid." On April 26, 2022, the Appellant initiated this appeal and claimed that the Complex did not respond to his request.

On appeal, the Complex claims that it received the Appellant's request on April 5, 2022, and sent a response to the Appellant on April 13, 2022, denying the request. 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 April 5, 2022, but did not respond to that request until April 13, 2022, or six business days later. Thus, the Complex violated the Act.[1]

The Complex denied the Appellant's request because it claims that "no responsive records exist within [the Appellant's] inmate file." The Complex claims that "the medical records clerk conducted an extensive search of [the Appellant's] records and did not find a copy of the requested records." After the Complex received this appeal, it claims to have "inadvertently misread" the request and determined that its initial response was "incomplete." After conducting another search after receipt of this appeal, the Complex found some records responsive to the Appellant's request and set up an appointment for the Appellant to inspect those records.[2] Therefore, that portion of the Appellant's appeal involving the records that have been provided is now moot. 40 KAR 1:030 §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.")

However, the Complex continues to assert on appeal that it does not possess records responsive to the Appellant's request for any and all Medicaid forms or his letter to Medicaid rescinding his authorization for Medicaid. With regard to this part of his request, the Complex states that it "does not keep nor possess Medicaid records." 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).

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[1] This Office has historically found that it cannot resolve factual disputes between requester and a public agency, such as whether a requester received a response to his request. *See, e.g.,* 22-ORD-069; 22-ORD-024; 21-ORD-233; 21-ORD-163. However, even though the Appellant claims to have not received the Complex's initial response, the Complex has admitted that it did not issue its response within the five business days required under KRS 61.880(1).

[2] The Complex claims that the Appellant came to the scheduled appointment to inspect the responsive records it possesses and "left satisfied."

Here, the Appellant claims he did not receive the Complex's response, accordingly, he did not attempt to make a *prima facie* case. Even if the Appellant had made a *prima facie* case that the Complex should possess the Medicaid records he requested, the Complex, on appeal, explains that it "does not keep nor possess Medicaid records." Thus, the Complex did not violate the Act when it did not allow inspection of records that do not exist within its possession.

A party aggrieved by this decision may appeal it by initiating 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.

Daniel Cameron
Attorney General

s/Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Anthony Sadler, #151598
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