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**22-ORD-135**

June 22, 2022

In re: Robin Lee Moore/Eastern Kentucky Correctional Complex

**Summary:** The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it denied an inmate’s request for a record that does not exist in the Complex’s possession. However, the Complex violated the Act when it failed to inform the inmate that it did not possess such a record.

***Open Records Decision***

On May 16, 2022, inmate Robin Lee Moore (“Appellant”) requested a copy of his “Complete Criminal History, *i.e.*, rap sheet.” He specified that he was not asking for his presentence investigation (“PSI”) report, but “just the rap sheet which is available [*sic*] on line.” The Complex denied the request on the grounds that a PSI report is exempt from disclosure under KRS 439.510 and KRS 61.878(1)(l). The Complex also provided mailing addresses for the Kentucky State Police (“KSP”), which performs criminal background checks, and the Administrative Office of the Courts (“AOC”), from which the Appellant could obtain the criminal history maintained on him by the Kentucky Court of Justice. This appeal followed.

Although the Complex is correct that PSI reports are exempt from inspection, *see* KRS 439.510, the Appellant did not ask for his PSI report. The Appellant requested another document containing his criminal history. In response, the Complex asserts that the only criminal history it maintains on the Appellant is the one contained in his PSI report. Upon conducting a search of the Appellant’s record in the Kentucky Offender Management System (“KOMS”), the Complex located no other record of the Appellant’s criminal history or a “rap sheet.” The Complex further advises that “[r]ap sheets and NCIC [National Crime Information Center] records are not the type of records that are currently maintained in the KOMS files of most inmates.”

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the agency does possess the requested record. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not attempted to present a *prima facie* case that the Complex possesses a criminal history or “rap sheet” for him other than the information contained in his PSI report. Therefore, the Complex is not obligated to provide the Appellant with a record that it does not possess.

However, because the Appellant requested a record of his criminal history *other* than that contained in his PSI report, the Complex should have affirmatively stated in its initial response that no records responsive to the request exist in its possession. *See Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 867 (Ky. App. 2021); *see also* 20-ORD-041 (finding that a public agency has a “duty to inform the requester in clear terms that it [does] not have the records”). Instead, the Complex denied the request as if the Appellant had requested a copy of his PSI report. By failing to inform the Appellant that it did not possess the record he requested, the Complex violated the Act.

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**  
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s/James M. Herrick  
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Distributed to:

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