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**22-ORD-161**

August 8, 2022

In re: Chad Heath/Hardin County Detention Center

**Summary:** The Hardin County Detention Center (the “Detention Center”) violated the Open Records Act (“the Act”) when it failed to respond to a request under the Act within five business days. However, the Detention Center did not violate the Act when it denied a request for a record that does not exist within its possession.

***Open Records Decision***

On July 1, 2022, Chad Heath (“Appellant”) submitted a request to the Detention Center for “a copy of the booking/arrest information on file” relating to the Appellant’s arrest on May 20, 2021. On July 8, 2022, having received no response from the Detention Center, the Appellant initiated this appeal.

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 Appellant claims that the Detention Center did not respond to his request within five business days. The Detention Center, on appeal, did not dispute the Appellant’s claim or allege that it issued a timely response to his request. Thus, it violated the Act.

After the appeal was initiated, the Detention Center responded to the request and stated affirmatively that “[t]here are no records of incarceration for this individual for May 20, 2021” within the Detention Center’s possession. 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 did not attempt to make a *prima facie* case that any responsive records exist in the Detention Center’s possession. Accordingly, the Detention Center did not violate the Act when it denied a request for 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 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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
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s/Matthew Ray  
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Distributed to:

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