



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

22-ORD-237

November 7, 2022

In re: Darnell Chivers/Grayson County Detention Center

Summary: The Grayson County Detention Center (“the Center”) did not subvert the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), when it did not provide records that do not exist.

Open Records Decision

Inmate Darnell Chivers (“Appellant”) submitted a request to the Center for copies of (1) “all body receipts . . . to remove him from federal to state custody,” (2) related “writs of habeas corpus,” and (3) “any other documents concerning the change of custody from federal to state” from February 25, 2019, to November 5, 2019. The Center provided the requested records. This appeal followed.

Under KRS 61.880(4), “[i]f a person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, . . . the person may complain in writing to the Attorney General.” Here, the Appellant claims the Center has subverted the intent of the act by providing a “partial and fabricated record.”

In response, the Center denies fabricating any records and claims to have provided the Appellant with all responsive records that exist in the Center’s possession. 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. See *Bowling v. Lexington-Fayette Urb. Cnty. Gov’t*, 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 established a *prima facie* case that additional responsive records exist. He states only that the Center was provided with a “big stack of papers” once when he was transferred into the custody of another agency. This bare claim does not establish a *prima facie* case that the requested records exist. Therefore, the Center did not subvert the intent of the Act by not producing records that do not exist.

The Appellant also alleges the Center provided “body receipts” for dates he was not removed from custody. However, the Office cannot resolve factual disputes between a requester and a public agency about the content of the records produced. *See, e.g.,* 22-ORD-148; 22-ORD-125; 22-ORD-100; 22-ORD-051; 21-ORD-163. Consequently, this Office is unable to find that the Center subverted the intent of the act within the meaning of KRS 61.880(4).

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Darnell Chivers #187615
Jason Woosley
Jeremy Logsdon