



COMMONWEALTH OF KENTUCKY
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22-ORD-254

November 28, 2022

In re: Farrand Skinner/Breckinridge County Jail

Summary: The Breckinridge County Jail (“the Jail”) violated the Open Records Act (“the Act”) when it failed to issue a response to a request to inspect records. The Jail did not violate the Act when it did not provide records that do not exist in its possession.

Open Records Decision

Inmate Farrand Skinner (“Appellant”) claims that on August 23, 2022, he submitted a request to the Jail for a copy of booking and custody logs related to a specific person. On October 24, 2022, having received no response from the Jail, the Appellant initiated this appeal.

On appeal, the Jail claims it “returned” the Appellant’s request because it never held the subject of the request in custody. Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). Here, the Jail states it “returned” the Appellant’s request, rather than granting or denying it. Therefore, the Jail violated the Act when it did not respond appropriately to the Appellant’s request.

The Jail now states it does not possess any responsive records because it never held the subject of the request in custody. 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 or should 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 responsive records exist. He has merely requested records concerning an individual whom the Jail states it has never held in custody. Therefore, the Jail did not violate the Act when it did not provide records it does not possess.

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.

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s/ Zachary M. Zimmerer
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Distributed to:

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