



COMMONWEALTH OF KENTUCKY
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22-ORD-279

December 21, 2022

In re: Leslie Haun/Luther Luckett Correctional Complex

Summary: The Luther Luckett Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it did not provide a record that does not exist or, if it does exist, is not within its custody or control.

Open Records Decision

On November 16, 2022, inmate Leslie Haun (“Appellant”) asked the Complex for a copy of a “Sick Call sign in form” from a specific date. In a timely response, the Complex denied the request. The Complex explained that the term “Sick Call sign in form” could refer to either a “Health Service Request,” which did not exist in the Appellant’s medical record for the requested date, or “the sick call sign in sheet used by the nurses to facilitate daily sick call,” which would be in the possession of Wellpath, LLC (“Wellpath”), a private contractor of the Department of Corrections. This appeal followed.¹

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 it does possess the requested records. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 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 Health Service Request for the requested date. Furthermore, on appeal, the Complex reiterates that, if a Wellpath sign-in sheet exists for the date in question, it is maintained by Wellpath

¹ On appeal, the Appellant also claims that Wellpath “is in violation of the [Act] as they have refused to provide [him] with a copy of the sick call list.” However, the Appellant submitted his request to the Complex, not to Wellpath. Therefore, only the Complex’s denial of the Appellant’s request is at issue in this appeal.

and not the Complex. A public agency “is responsible only for those records within its own custody or control.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980)). Accordingly, the Complex did not violate the Act when it did not provide a record that does not exist or, if it does exist, is not within its custody or control. *See, e.g.*, 22-ORD-164.

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 emailed to OAGAppeals@ky.gov.

Daniel Cameron

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s/ James M. Herrick

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Assistant Attorney General

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Distributed to:

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