



COMMONWEALTH OF KENTUCKY
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23-ORD-033

February 14, 2023

In re: Uriah Pasha/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist in its possession.

Open Records Decision

Inmate Uriah Pasha (“the Appellant”) submitted a request to the Complex to inspect the “Parole Plan submitted for his October 12, 2020 Parole Hearing” and the “Recording of his Parole Hearing.” The Complex denied the request and told the Appellant that it did not have custody of the requested records. This appeal followed.

On appeal, the Complex says neither the Appellant’s “Parole Plan” nor a “Recording of his Parole Hearing” exists in its 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 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 the Complex possesses the “Parole Plan” or “Recording of his Parole Hearing.” Therefore, the Complex did not violate the Act when it did not provide records it does not possess.¹

¹ Although the Complex maintains on appeal that it does not possess the requested records, it has now provided the Appellant an “order” it believes may be responsive to the request.

Under KRS 61.872(4), if “the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.” In its initial response, the Complex told the Appellant to submit his request to the Little Sandy Correctional Complex and provided the facility’s address.² Thus, the Complex did not violate the Act when it provided the name and address of the agency it believed to be the custodian of the records.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
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Distributed to:

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² After this appeal was initiated, the Complex informed the Appellant that the Kentucky Parole Board is the custodian of the requested records and provided the Board’s mailing address.