



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

**23-ORD-074**

March 28, 2023

In re: Tequan Neblett/Luther Luckett Correctional Complex

**Summary:** The Luther Luckett Correctional Complex (“the Complex”) subverted the intent of Open Records Act (“the Act”) by misdirecting an inmate’s request to the incorrect records custodian.

***Open Records Decision***

On February 1, 2023, inmate Tequan Neblett (“the Appellant”) submitted a request to the Complex, to the attention of the healthcare administrator, asking for a copy of a letter he allegedly sent to her. In a timely response, the Complex’s medical records custodian denied the request because no such letter existed.<sup>1</sup> On February 10, 2023, the Appellant submitted two more requests, these to the attention of “inmate records,” seeking a copy of the “tablet agreement” he signed and his outgoing legal mail for the months of November and December 2022. In a timely response, the medical records custodian again denied the request because neither of these records appeared in the Appellant’s “medical file.” The Appellant then initiated this appeal, claiming the Complex directed his requests to the wrong records custodian. Specifically, he admits neither the “tablet agreement” nor his legal mail would exist in his medical file, so it was inappropriate for the medical records custodian to respond to these requests.

“If a person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been

---

<sup>1</sup> The Complex did not receive the request until February 15, 2023, and issued its response on February 17, 2023. Because a public agency must respond within five business days of receiving a request to inspect records, KRS 61.880(1), the Complex’s response was timely issued two business days after receipt.

denied.” KRS 61.880(4). On appeal, the Complex states its medical records custodian should not have responded to the Appellant’s second and third requests. Under KRS 61.872(4), “[i]f 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.” The Appellant properly addressed his second and third requests to the person who would have custody and control of the requested records, but his application was misdirected to the medical records department. Accordingly, the Complex subverted the intent of the Act, short of denial, by misdirecting the Appellant’s request that was properly addressed to its official records custodian.

After receipt of the appeal, the records custodian for inmate files reviewed the requests and located the requested “tablet agreement” and legal mail logs for the requested months. Accordingly, any dispute regarding those records is now moot. *See* 40 KAR 1:030 § 6. However, the Complex states it does not possess a copy of the letter the Appellant allegedly sent to the healthcare administrator, who is an independent contractor for Wellpath, LLC. The Complex also states it does not possess copies of the legal mail the Appellant sent outside the institution. 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).

The Appellant has not made a *prima facie* case the letter he allegedly sent to Wellpath exists, or that the Complex should possess copies of his legal mail sent outside of the institution.<sup>2</sup> Accordingly, the Complex did not violate the Act when it denied a request for records that do not exist.

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.

---

<sup>2</sup> To the contrary, the Complex should not possess copies of communications between inmates and their attorneys, which would be protected by the attorney-client privilege. *See* KRE 503.

**Daniel Cameron**  
**Attorney General**

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

#101

Distributed to:

Taquan Neblett #119028  
Jesse L. Robbins  
Ann Smith  
Lydia Kendrick