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**23-ORD-101**

May 1, 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 denied a request for records because it did not possess records responsive to the request.

***Open Records Decision***

Inmate Uriah Pasha (“Appellant”) submitted a request to the Complex for a copy of his “Approved Visitor List during the months of November and December 2020; and November and December 2022.” The Appellant also requested copies of any records that included “the decision to remove any visitor from those lists.” In a timely response, the Complex denied the request because, after searching the Appellant’s file in the Kentucky Offender Management System (“KOMS”), no responsive records were found. The Complex explained that KOMS “automatically deletes an inmate’s visitor list once the inmate has been released.” The Complex further explained that the Appellant was “paroled in December 2020 so at that time [his] visitor list would have been deleted and since [his] return to corrections [he] has not had an approved visitors list.” This appeal followed.

On appeal, the Complex again states records responsive to the Appellant’s request do not exist. 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, in an attempt to make a *prima facie* case, the Appellant asserts that the Complex should retain his visitor lists for “the entire length of his sentence” because he “is serving a term of life imprisonment” and that “parole does not end [his] sentence.” However, the Appellant does not cite any authority to support his assertions that “visitor lists” must be retained after an inmate is released on parole.<sup>1</sup> In response, the Complex, explains that the visitor lists it maintains are divided into two categories: “Current Approved Visitors” and “Non-Approved Visitors.” The Complex further explains that the Appellant was “released on parole in December, 2020” and that the status of his visitor list was automatically changed to “Delete (due to release).” As a result, the Complex explains that “all of [the Appellant’s] previous visitors are currently listed as ‘Non-approved’” and that “currently, [he] has no approved visitors.” Because the Appellant’s request was for an *approved* visitor list “during the months of November 2020 and December 2020” and “November 2022 and December 2022,” the Complex states that no record responsive to that request exists within its possession.<sup>2</sup>

In conclusion, the Complex states it does not possess any records responsive to the Appellant’s request. The Appellant has not made a *prima facie* case that the requested records do or should exist. Even if he had made a *prima facie* case, the Complex adequately explained why no records responsive to the request exist. Thus, the Complex did not violate the Act when it denied the Appellant’s request.

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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<sup>1</sup> While the applicable records retention schedule contains a category for visitor *logs*, which document past visits to correctional facilities and are to be retained for a total of nine years, the retention schedule does not contain a category for “approved visitor *lists*,” which would appear to be a document containing information on who *may* visit the Appellant in the future. See Series 03013, Visitor Logs, Dept. of Corrections Retention Schedule, available at <https://kdla.ky.gov/records/RetentionSchedules/Documents/State%20Records%20Schedules/kycorrections.PDF> (last accessed May 1, 2023).

<sup>2</sup> Although the Complex does not specify whether records documenting “any decision to remove visitors” from the Appellant’s approved list exist, the Complex has explained on appeal why the Appellant’s previously approved visitors are currently classified as non-approved.

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s/ Matthew Ray  
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Distributed to:

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