



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-169**

July 11, 2023

In re: William Cope/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 it does not possess.

***Open Records Decision***

Inmate William Cope (“Appellant”) submitted two requests to the Complex to inspect various records relating to music purchases he has made.<sup>1</sup> The Complex denied the request because it does not possess responsive records. This appeal followed.

On appeal, the Complex maintains that it does not possess records responsive to the Appellants request. Rather, it states the records are possessed by an unaffiliated “digital media vendor.” 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).

---

<sup>1</sup> Specifically, the Appellant sought: (1) a copy of a list showing the 290 songs a specified individual had sent him; and (2) “inmate account financial transaction media-management purchases receipts” associated with 320 songs he claims are in his mp3 player database.

Here, the Appellant has not established a *prima facie* case that the records related to his songs exist. Therefore, the Complex did not violate the Act when it did not provide records it does not possess.<sup>2</sup>

A party aggrieved by this decision may appeal it by initiating an 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.

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

/Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

#250

Distributed to:

William D. Cope, Jr. #197416  
Amy V. Barker  
Lydia C. Kendrick  
Ann Smith

---

<sup>2</sup> The Complex also denied the request because the Appellant possessed insufficient funds to complete his requests. Because the Office agrees the Complex properly denied the request because it does not possess responsive records, the Office declines to consider the Complex's other reason for its denial.