



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-219

August 16, 2023

In re: Patrick Ormond/Bell County Forestry Camp

Summary: The Office is unable to find that the Bell County Forestry Camp (the “Camp”) violated the Open Records Act (“the Act”) when it denied a request for a record that does not exist. The Camp did not violate KRS 61.872(4) when it could not provide the name and location of the official records custodian of the requested record.

Open Records Decision

Inmate Patrick Ormond (“Appellant”) submitted a request to the Camp for “a print out of” a phone call he made to a specific number on a specific date.¹ In a timely response, the Department denied the Appellant’s request because “there is [*sic*] no public records maintained by [the Camp] responsive to [his] request.” This appeal followed.

The Camp stated affirmatively that it does not possess any responsive records. 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 the requested records do exist in the agency’s custody or control. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that records do or should exist in the agency’s custody or control, “then the agency may also be called upon to prove that its search was adequate.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky.

¹ On appeal, the Appellant claims that his request was for “either the recording or a transcript of a” specific phone call. However, the Appellant’s request was for a “[p]hone call made on 7/3/23 to [a specific phone number] around 11:52 am.” He further stated he needed “a print out of the conversation that [he] can send to the court. A redacted copy would be great.”

2013) (citing *Bowling*, 172 S.W.3d at 341). The Appellant did not attempt to make a *prima facie* case that the requested “print out” of the conversation exists within the custody or control of the Camp. As a result, the Camp is not required to prove its search was adequate, and the Office cannot find the Camp violated the Act when it denied a request for a record that does not exist.

The Appellant also claims the Camp violated KRS 61.872(4) when it did not “notify [him]” and “furnish the name and location of the official custodian of the agency’s public records.” 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.” Here, the Appellant addressed his application to the Camp. In its initial response, and again on appeal, the Camp notified the Appellant that it does not have custody or control of the records requested because it does not make transcripts of inmate phone calls. The Camp also informed the Appellant that that it is unaware of any agency that would have custody or control of the requested record. As a result, the Department did not violate KRS 61.872(4).

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

s/ Matthew Ray
Matthew Ray
Assistant Attorney General

#320

Distributed to:
Patrick Ormond #323340
Amy V. Barker
Lydia C. Kendrick
Ann Smith