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**22-ORD-256**

September 25, 2023

In re: Eric Lloyd Hermansen/Finance and Administration Cabinet

**Summary:** The Finance and Administration Cabinet (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it denied a request for records that do not exist.

***Open Records Decision***

Inmate Eric Lloyd Hermansen (“Appellant”) submitted a request to the Cabinet for a copy of any “submissions” it received between 2021 and 2023 from the Justice and Public Safety Cabinet or two other public agencies regarding a “privatization contract with Union Supply and/or its subsidiaries” to operate canteen services within the Commonwealth’s correctional facilities. In a timely response, the Cabinet denied the Appellant’s request because it “was unable to locate” any responsive records. The Cabinet also notified the Appellant that the Justice and Public Safety Cabinet may possess the requested record and provided that agency’s contact information. This appeal followed.

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 makes 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 requested copies of any “submissions” made to the Cabinet related to a contract between the “Kentucky prison system” and “Union Supply” allowing it to operate the canteen. In its initial response, and again on appeal, the Cabinet stated affirmatively that it does not possess any records responsive to the request. In an attempt to make a *prima facie* case that the Cabinet should possess records responsive to his request, the Appellant provided an invoice from “Union Supply Direct” for the purchase of two items to be shipped to the Eastern Kentucky Correctional Complex. The Appellant asserts the invoice is proof that a contract must exist between the “Kentucky prison system” and “Union Supply” and that the Cabinet must possess “submissions” related to the contract pursuant to KRS 45A.551.

Under KRS 45A.551(1), “[u]pon approval of the [Cabinet], a state agency may enter into a privatization contract.” Although KRS 45A.551 requires a state agency to submit certain documentation to the Cabinet to obtain its approval before entering a privatization contract, neither the statute nor the invoice showing that “Union Supply Direct” purchased an item establishes a *prima facie* case that a privatization contract exists between “Union Supply Direct” and any of the state agencies the Appellant identified. As a result, the Appellant has failed to make a *prima facie* case that the Cabinet possesses any records responsive to his request and the Office cannot find that the Cabinet violated the Act.

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](mailto:OAGAppeals@ky.gov).

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

s/ Matthew Ray  
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Assistant Attorney General

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Distributed to:

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