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23-ORD-262

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In re: Antonio Dionte Williamson Trust/Department of Corrections

Summary: The Department of Corrections (“the Department”) did not violate the Open Records Act (“the Act”) when it denied a request for a record that does not exist.

Open Records Decision

Antonio Dionte Williamson, the beneficiary of the Antonio Dionte Williamson Trust (“Appellant”), submitted a request to the Department for “all details about” a bond it issued with an identified “CUSIP number.”¹ In a timely response, the Department denied the Appellant’s request because, “[a]fter performing a diligent search, no records were found responsive to [his] request.” 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 has not attempted to make a *prima facie* case that the Department should possess the record he described. Rather, he merely asserts the Department’s “response is incorrect” because he “provided specific information about the bond in his request.” On appeal, the Department again states it does not possess

¹ The Appellant sought “all details about” a “Kentucky Department of Corrections Correctional Building Revenue Bonds Series 2023” with “[t]he DKYW321CR000123-001 CUSIP number.”

any records responsive to the Appellant's request. In reply, the Appellant asserts the Department "does have this record" and that it "failed to properly search for the record." The Office has previously found that a requester's bare assertion that an agency possesses the requested record is not enough to make a *prima facie* case that the record exists. *See, e.g.,* 23-ORD-217; 23-ORD-181; 23-ORD-142; 22-ORD-040. Similarly, the Appellant's bare assertions here do not make a *prima facie* case that the requested record does or should exist. Accordingly, the Office cannot find that the Department violated the Act when it denied a request for a record that it claims does not exist.

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.

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s/ Matthew Ray
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Distributed to:

Antonio Williamson Trust
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