



COMMONWEALTH OF KENTUCKY  
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**23-ORD-278**

October 20, 2023

In re: Carlos Thurman/Green River Correctional Complex

**Summary:** The Green River Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

***Open Records Decision***

On September 15, 2023, inmate Carlos Thurman (“Appellant”) requested “a copy of the email that was censored on 8-1-23 and the administrator’s email date 8-1-23.”<sup>1</sup> In a timely response, the Complex denied the request because “JPay friends and family emails are not public records” and are “communications of a purely personal nature unrelated to any governmental function pursuant to KRS 61.878(1)(r).” This appeal followed.

On appeal, the Complex claims the requested “email that was censored” does not exist because the Complex and the Department of Corrections “do not edit emails.”<sup>2</sup> 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 exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). The mere assertion that records exist is not sufficient to establish a *prima facie* case that they do exist. *See, e.g., 23-ORD-042*. Here, the Appellant has not presented a *prima facie* case that a censored email exists. Accordingly, the Complex did not violate the Act.

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<sup>1</sup> The Appellant also requested a legal mail log sheet, which was provided to him.

<sup>2</sup> Assuming the “administrator’s email” requested by the Appellant is related to the alleged censoring of the Appellant’s email, the Complex’s position indicates that record does not exist, either.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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**  
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s/ James M. Herrick  
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Assistant Attorney General

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