



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-282

October 24, 2023

In re: Leslie Lawson/Whitley County Detention Center

Summary: The Whitley County Detention Center (“the Jail”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

Open Records Decision

In two letters dated May 18 and June 15, 2023, inmate Leslie Lawson (“Appellant”) requested copies of “communications logs from 12-29-2021 through 1-2-2021 [sic]”¹ documenting correspondence between three officers of the Corbin Police Department and the Jail’s employees concerning two criminal cases.² In a written response dated September 11, 2023, the Jail denied the request because no communication logs existed between the Jail and the Corbin Police Department. This appeal followed.

Under KRS 61.880(1) and KRS 197.025(7), a correctional facility must respond within five business days after receipt of a request for records. Here, the Appellant claims the Jail failed to timely respond to his requests. However, the Jail states it did not receive either request until September 11, 2023, the same date it responded to them. Because the Office cannot adjudicate disputed issues of fact, such as when an agency received a request to inspect records, the Office cannot find that the Jail’s response was untimely. *See, e.g.*, 22-ORD-010.

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

¹ The Jail recognized January 2, 2021, as “obviously the wrong date because of the year change,” and therefore treated the date as January 2, 2022.

² The Appellant also requested other records and information, but he has not challenged the Jail’s disposition of the other portions of his requests.

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 claims the requested communication logs should exist because the Corbin Police Department asked the Jail to conduct a search of the Appellant’s artificial leg. On appeal, however, the Jail explains the requested logs do not exist because the Jail had no such communications with the Corbin Police Department. Therefore, even if the Appellant had presented a *prima facie* case that the communication logs exist, the Jail has sufficiently explained why they do not. Accordingly, the Jail did not violate the Act.

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
James M. Herrick
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