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23-ORD-307

November 14, 2023

In re: Stanley W. Roberts/Laurel County Detention Center

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

Open Records Decision

On September 7, 2023, inmate Stanley W. Roberts (“Appellant”) submitted a request to the Center seeking a “copy of [his] disciplinary record” from 2017. Having received no response by October 12, 2023, the Appellant initiated this appeal.

On appeal, the Center claims never to have received the Appellant’s request. Under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1). Here, the Center claims it did not receive the Appellant’s request until this appeal was initiated. The Center notes the address to which the Appellant sent his request is not the Center’s mailing address. The Office cannot resolve factual disputes, such as whether a public agency actually received a request. *See, e.g.*, 23-ORD-071; 23-ORD-005; 22-ORD-216; 22-ORD-148; 22-ORD-125; 21-ORD-163. Thus, the Office cannot find the Center violated the Act when it did not respond to a request that it claims it did not receive.

On appeal, the Center also states it possesses no records responsive to the Appellant’s request. 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 made a *prima facie* case that the Center possesses records responsive to his request. Therefore, the Center did not violate the Act when it did not provide the requested records.

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/ Zachary M. Zimmerer
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Distributed to:

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