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23-ORD-316

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In re: Carlos Harris/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex ("Complex") violated the Open Records Act ("the Act") when it did not explain that a portion of the Appellant's request was denied or explain why that portion was denied. The Complex did not violate the act when it did not provide records that it does not possess.

Open Records Decision

Inmate Carlos Harris ("Appellant") submitted a request to the Complex seeking to inspect his "medical file for letters sent to medical staff and responses regarding [his] medical concerns" and the files of four Complex employees for "letter[s] [he] sent them and responses regarding [his] medical concerns." The Complex denied the request because "no letters or responsive documents responsive to [his] request exist in [his] medical records file." This appeal followed.

Upon receiving a request for records 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). If an agency denies the inspection of any record, in whole or in part, its response must include "a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." *Id.* A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090.

Here, the Appellant sought two categories of records: (1) letters he sent to medical staff and their responses contained in his medical file; and (2) letters he sent

to four Complex employees and their responses contained in their respective files. The Complex's denial addressed the first category of records but ignored the second. Therefore, the Complex violated the Act when it failed to provide a written response explaining the second part of the request had been denied and failed to explain why.

Regarding the first part of the Appellant's request, the Complex maintains that the Appellant's medical file does not contain any responsive records because "correspondence is not kept in the [Appellant's] medical records." 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 established a *prima facie* case that the Complex keeps letters regarding his medical concern in his medical file. Therefore, the Complex did not violate the Act when it did not provide records responsive to this portion of the Appellant's request.

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.

Daniel Cameron
Attorney General

s/ Zachary M. Zimmerer
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Assistant Attorney General

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Distributed to:

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