



COMMONWEALTH OF KENTUCKY
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23-ORD-332

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In re: Elbert Long/Kentucky Parole Board

Summary: The Kentucky Parole Board (“Board”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

Open Records Decision

Inmate Elbert Long (“Appellant”) submitted a request to the Board seeking a copy of a transcript from his preliminary parole revocation hearing that occurred in August 1988. In response, the Board stated it does not possess a transcript of the Appellant’s hearing. This appeal followed.

On appeal, the Board maintains that it does not possess a transcript of the Appellant’s hearing. 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 asserts the transcript exists because it allegedly was used as evidence against him in his federal criminal case. But that assertion alone does not establish a *prima facie* case that the Board currently possesses the transcript.¹

¹ The Board states that, after this appeal was initiated, it determined that a copy of the transcript is saved in the Department of Correction’s Kentucky Offender Manager System (“KOMS”). The Board further states that it is not the custodian of records kept in KOMS. Under KRS 61.872(4), if “the person

Therefore, the Board did not violate the Act when it did not provide records it does not possess.

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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to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records." The Board has provided the Appellant with the name and address of the custodian of KOMS records and the custodian of court records in the Western District of Kentucky.