



COMMONWEALTH OF KENTUCKY  
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24-ORD-025

January 29, 2024

In re: Uriah Pasha/Western Kentucky Correctional Complex

**Summary:** The Office cannot find that the Western Kentucky Correctional Complex (“Department”) violated the Open Records Act (“the Act”) when it did not provide records that do not exist.

***Open Records Decision***

Uriah Pasha (“Appellant”) submitted a request seeking “a copy of Central Office’s response to” an administrative appeal the Appellant submitted on December 19, 2023. In response, the Complex stated a copy of Central Office’s response to his December 19, 2023, appeal does not exist. This appeal followed.

On appeal, the Complex maintains that the record the Appellant requested does not exist. 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 provides a copy of an administrative complaint he allegedly submitted on December 13, 2023, and a copy of his administrative appeal he allegedly initiated on December 19, 2023. He argues the Central Office must have issued a response because his appeal exists. In response, the Complex states it has searched the files located at both the Central Office and the Complex, but it has no record of having received either the Appellant’s administrative complaint or his appeal dated December 19, 2023. Accordingly, no response to the appeal exists because it has no record that the appeal had been received. The Office cannot resolve

factual disputes between a requester and a public agency, such as whether the public agency actually received an administrative appeal. *See, e.g.*, 23-ORD-071; 23-ORD-005; 22-ORD-216; 22-ORD-148; 22-ORD-125; 21-ORD-163. Regardless, simply providing a copy of an administrative appeal does not present a *prima facie* case that the Complex received it and responded to it. Therefore, the Office cannot find that the Complex violated 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.

**Russell Coleman**  
**Attorney General**

/s/ Zachary M. Zimmerer  
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Distributed to:

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