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24-ORD-100

April 17, 2024

In re: Ben W. Richard, Jr./Luther Luckett Correctional Complex

**Summary:** Although the Luther Luckett Correctional Complex (the “Complex”) violated the Open Records Act (“the Act”) when it did not originally conduct an adequate search for requested records, it has mitigated its violation by conducting an adequate search and providing the Appellant all responsive records that exist.

***Open Records Decision***

Inmate Ben W. Richard, Jr (“Appellant”) submitted two requests to the Complex to inspect various records.<sup>1</sup> In timely responses, the Complex partially granted the requests and provided 22 pages of responsive records. The Complex partially denied the requests because “the signed monthly reports for 2021 have been discarded due to the retention schedule of the reports.” The Complex affirmatively stated it does not possess any additional responsive records other than those it provided to the Appellant. This appeal followed.

Once a public agency states affirmatively that it does not possess any additional records, the burden shifts to the requester to present a *prima facie* case that additional records do exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that additional records do or should exist, “then the 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). To support a claim that the agency possesses responsive records it did not provide, the Appellant

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<sup>1</sup> First, the Appellant requested a copy of his “LexisNex[i]s Research database signed monthly reports” from January 2021 to October 2023. Second, the Appellant requested a copy of “each monthly legal supplies log, signed by [L]egal Aid Ben Richard” from January 2021 to February 2024.

must produce *some evidence* that calls into doubt the adequacy of the agency's search. *See, e.g., 95-ORD-96.*

Here, the Appellant has not made a *prima facie* case that additional records should exist or that the Complex's search was inadequate. Rather, he merely asserts that the types of reports he has requested should exist.<sup>2</sup> As a result, the Appellant failed to establish a *prima facie* case that the Complex should possess additional records. Nevertheless, the Complex states it conducted another search after receiving notice of this appeal and located an additional five pages of responsive records. It will make those records available to the Appellant after he pays the \$0.50 copying fee. The Complex explains that all records requested from 2021 were destroyed in accordance with its retention schedule. Further, the Complex explains that it "implemented a new procedure" in 2023, and therefore, no additional logs were created or used since then.

The Office has previously found that a public agency fails to conduct an adequate search when it does not locate all responsive records. *See, e.g., 21-ORD-242; 21-ORD-178; 20-ORD-013.* Thus, while the Complex's candor on appeal is welcome, it has admitted its initial search was inadequate. Accordingly, by failing to perform an adequate search in the first instance, the Complex violated the Act, but its subsequent and more comprehensive search on appeal has mitigated its initial violation.

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](mailto:OAGAppeals@ky.gov).

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<sup>2</sup> The Appellant primarily relies on *Kendrick v. Bland*, 586 F.Supp. 1536 (W.D. Ky. 1984), which found the law library at the Kentucky State Reformatory to be inadequate. As such, the *Kentucky State Penitentiary* entered a consent decree to improve library services. However, this consent decree, which required the Kentucky State Penitentiary to procure certain legal texts in 1984, has no bearing on whether the *Luther Lockett Correctional Complex*, which is a different correctional facility, maintains digital reports of LexisNexis searches. The Appellant also provides copies of various reports he received from the Complex documenting the time he spent conducting research on the Complex's computers. However, these documents do not establish that the Complex must possess copies of a "LexisNexis Research database" for the periods he was conducting research.

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

/s/ Matthew Ray  
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Assistant Attorney General

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Distributed to:

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