



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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25-ORD-152

June 12, 2025

In re: Ben Richard/Luther Luckett Correctional Complex

Summary: The Luther Luckett Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

Open Records Decision

Inmate Ben Richard (“the Appellant”) requested a copy of all Sex Offender Treatment Program (“SOTP”) “waiting list records” relating to him, specifically records showing his “movement up [or] back down the waiting list by number.” In a timely response, the Complex explained that the list is an Excel spreadsheet in which “an inmate’s place on the waiting list is subject to change daily/weekly” due to a variety of factors, and that the spreadsheet is continually updated. The Complex stated it does not keep records of the movement of inmates up or down the list. After confirming the Appellant still wanted a copy of the waiting list, the Complex provided him a copy, with information for other inmates redacted.¹ This appeal followed.

Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to make 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). A requester must provide some evidence to make a *prima facie* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record, or other factual support for the existence of the records. *See, e.g.*, 21-ORD-177; 11-ORD-074. A requester’s bare assertion that certain records should exist is insufficient to make a *prima facie* case that the records actually do exist. *See, e.g.*, 22-ORD-040. Here, the Appellant presents various arguments for why he believes the Complex should have used certain Excel settings to preserve previous versions of the waiting list or create “change logs,” but he provides no evidence that such records ever existed. Rather, he only asserts that a

¹ Under KRS 197.025(2), an inmate is only entitled to obtain “a record which contains a specific reference to” him.

different version of the record could have been created.² Because the Appellant has not made a *prima facie* case that the requested records currently exist, the Office cannot find that the Complex violated the Act.³

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

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² The Act does not require a public agency to create a record to satisfy a request. *See, e.g.*, 24-ORD-278; 24-ORD-229; 16-ORD-052.

³ The Appellant further complains that the spreadsheet provided to him did not contain “a ‘cell’ identifying ‘column headings’” explaining the meanings of the data in particular columns. On appeal, the Complex has provided the Appellant with the column headings interpreting the data. Accordingly, this appeal is moot as to that portion of the record. *See* 40 KAR 1:030 § 6.