



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-229

August 25, 2025

In re: Karim Zein/Kentucky State Penitentiary

**Summary:** The Kentucky State Penitentiary (“the Penitentiary”) did not violate the Open Records Act (“the Act”) when it did not produce records it does not possess.

### *Open Records Decision*

On July 1, 2024, inmate Karim Zein (“the Appellant”), submitted a two-part request to the Penitentiary seeking “[i]ncoming ‘non-priv[i]leged’ mail logs for all [his] mail” between October 2024 and the date of his request and letters sent to him by a Penitentiary employee between February 1, 2025, and the date of his request. In response, the Penitentiary denied the request, explaining that it does not possess records responsive to either part of the Appellant’s request. The Penitentiary further explained that it “does not log any incoming mail that is not privileged” and that the employee whose letters he seeks “does not save copies of the letters or responses she sends back.”<sup>1</sup> This appeal followed.<sup>2</sup>

On appeal, the Penitentiary maintains that it does not possess any additional responsive records. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make a *prima facie* case that the record does 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

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<sup>1</sup> Thus, the Penitentiary explained, the letters the Appellant received are the only copies of the records requested.

<sup>2</sup> The Appellant also sought to appeal the Penitentiary’s June 20, 2025, response to the Appellant’s June 16, 2025, request. Under KRS 197.025(3), “all persons confined in a penal facility shall challenge any denial of an open record [request] with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial.” The Appellant submitted his appeal to the Office on July 21, 2025, as reflected by the postmark of his appeal. Thus, the Appellant’s appeal from the Penitentiary’s response to his June 16 request is time-barred under KRS 197.025(3).

a requested record exists, 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 record. *See, e.g.*, 21-ORD-177; 11-ORD-074.

Here, the Appellant has not established a *prima facie* case that the Penitentiary possesses the requested mail log or identified letters. Accordingly, the Penitentiary did not violate the Act when it did not produce records it does not possess.<sup>3</sup>

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  
Zachary M. Zimmerer  
Assistant Attorney General

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Distributed to:

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<sup>3</sup> The Appellant has also resubmitted an appeal challenging the Penitentiary's June 4, 2025, production of records. The Office previously declined jurisdiction in that appeal because the Appellant's submission did not comply with KRS 61.880(2)(a) (requiring "a copy of the written request and a copy of the written response denying inspection"). The Appellant has not submitted any new material related to the subject of that appeal. But even if he had, because more than 20 days have passed since the Penitentiary's June 4, 2025, record production, any appeal of that record production is time-barred under KRS 197.025(3).