



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-346

November 6, 2025

In re: Denver Cline/Lee Adjustment Center

**Summary:** The Lee Adjustment Center (“the Center”) did not violate the Open Records Act (“the Act”) when it denied a request for records that do not exist.

### *Open Records Decision*

Inmate Denver Cline (“the Appellant”) submitted a request to the Center for “the rest of the evidence that went along with” a disciplinary report he had obtained through a previous request, including “a copy of the pictures that was took [sic] pertaining to this write up.” In a timely response, the Center provided a witness statement, which it claimed was “the only evidence with the write up that was dismissed in KOMS.” This appeal followed.

Once a public agency states affirmatively that no further responsive 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). If the requester makes a *prima facie* case that the 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). 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 states that the “Disposition of Physical Evidence” section of the disciplinary report form refers to “photographs.” However, the Center explains it has “double checked” for additional records and found “there are no photographs that have been retained and there are none that are filed on KOMS,” the Kentucky Offender Management System. The Center further explains that the “underlying

disciplinary report was actually dismissed on July 24, 2025 and that could account for why the photographs [are] no longer available.” The prior dismissal of a prison disciplinary report is a sufficient explanation for why records pertaining to that report no longer exist. *See, e.g.*, 21-ORD-174 (noting expungement procedures for correctional institutions). Thus, to the extent the Appellant has made a *prima facie* case that the photographs should exist, the Center has rebutted that presumption. Accordingly, the Center did not violate the Act.

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**

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/s/ James M. Herrick

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Assistant Attorney General

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Distributed to:

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