



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-396

December 9, 2025

In re: Kyle Thompson/Little Sandy Correctional Complex

Summary: The Little Sandy Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it denied a request for records that it does not possess.

Open Records Decision

Inmate Kyle Thompson (“Appellant”) submitted two requests to the Complex for records. First, he requested a copy of his “signed CPO/MTA’s” dated¹ June 6, 2025, “for outgoing legal mail.” Second, he requested a copy of his “outgoing legal mail” on June 6, 2025, addressed to “the United States District Court” or a named person. The Complex denied both requests because the records do not exist.² This appeal followed.³

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

¹ A CPO is a cash payment order; an MTA is a money transfer authorization.

² Specifically, the Complex stated “there is not [a] record of [the Appellant] writing to the United States District Court” or to the named person. It further explained that because that mail does not exist, “there is no record of the signed CPO from that date either.”

³ The Appellant further asserts that if the Complex “did not log the mail as they are required then they intentionally violated KRS 514.060.” That allegation is beyond the scope of this appeal under KRS 61.880(2).

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, to make a *prima facie* case that the records should exist, the Appellant asserts that the Complex "is required to maintain an" outgoing mail log regarding legal mail and CPOs. However, the Appellant does not provide any statute, regulation, or any authority to support this assertion. Moreover, the Appellant's assertion is that the Complex is "required to maintain" such a record, not that he actually sent legal mail, filled out any form that would cause any record to be generated, or that the Complex possessed responsive records at the time of his request. As such, the Appellant has not made a *prima facie* case that any responsive records exist or were ever in the possession of the Complex. Thus, the Office cannot find that the Complex violated the Act when it denied a request for records that 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
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

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