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26-ORD-003

January 9, 2026

In re: Evan Scott/Department of Corrections

Summary: The Department of Corrections ("the Department") did not violate the Open Records Act ("the Act"), when it denied requests for records it does not possess or when it denied a request for a record that, if released, would constitute a security threat under KRS 197.025(1).

Open Records Decision

Evan Scott ("the Appellant") submitted a request to the Department for three categories of records related to allegations that a specific Sergeant "planted" contraband on a specific inmate.[1] The Department denied the first and third parts of the request because its search "did not yield any existing records responsive to items." The Department denied the second part of the request under KRS 197.025(1) because "[d]isclosure of such information could threaten the safety of staff, inmates, and the public." This appeal followed.

Once a public agency states affirmatively that no responsive records exist, the burden shifts to the requester to make a *prima facie* case that 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

[1] First, he requested "[a]ll emails sent to Warden Bradley between August 1, 2024[,] and December 31, 2024[,]" which relate to the "allegations that [a specific sergeant] planted a weapon/contraband on an inmate, including but not limited to the incident involving [a specific inmate]." Second, he requested a "complete copy of the initial occurrence report or incident report filed by [a specific officer]" related to reports or allegations [a specific sergeant] planted a weapon or contraband on a specific inmate . . . filed between August 1, 2024[,] and December 31, 2024." Third, he requested "[t]he audio recording from the disciplinary hearing involving inmate Bryan S./Bryan Sieve regarding the piece of metal found by myself, John Scott, in his property tote. Disciplinary number: SSCC-2024-0001716."

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 the requested records exist, such as the existence of a statute or regulation requiring the creation of the requested records 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 records responsive to the first part of his request exist, the Appellant asserts:

> [T]he individual who sent the email in question is a current Department employee. Under KRS 61.870(2), a public record includes any record "prepared, owned, used, in the possession of, or retained by a public agency." An email written and sent by a current correctional staff member meets that statutory definition, even if the recipient is no longer employed. The Department's denial does not indicate that any search of the sender's email account was conducted, despite its obligation to do so under KRS 61.8715. Further, during a 2025 Internal Affairs interview, a staff member stated that he emailed [the Warden] in October 2024 reporting allegations against me. This confirms the existence of a record authored by a current employee and within the Department's control.

According to the Appellant, this is *prima facie* evidence that the Department possesses records responsive to the first part of his request that have not been disclosed. However, he does not provide a copy of the "interview" he references. Moreover, just because the Department did not list any specific location that it searched for responsive records does not mean that it did not search those places or that it possessed any responsive records at the time of the Appellant's request. Although the Appellant may have made a *prima facie* case that a conversation took place referencing an email, or that the Department did not list all locations it searched, he has not made a *prima facie* case that the conversation referred to in the email references any records responsive to the first part of his request or that the Department possessed any responsive records at the time of his request.

To make a *prima facie* case that the Department should possess records responsive to the third part of his request, the Appellant asserts:

> [T]he disciplinary paperwork for SSCC-2024-0001716—specifically "Disciplinary Part II"—lists a begin time, end time, and tape time for the hearing. This documentation confirms that an audio recording was made, and therefore a responsive record must exist or must have existed. A public agency cannot avoid production by denying the existence of a record contradicted by its own documents.

According to the Appellant, this is *prima facie* evidence that the Department possesses records responsive to the third part of his request that have not been disclosed. However, the Appellant does not provide a copy of the "disciplinary paperwork" he claims proves that "[a] responsive record must exist or have existed." Thus, although the Appellant may have made a *prima facie* case that some sort of paperwork references records that may or may not have been responsive to his request, he fails to make a *prima facie* case that the Department possessed any records responsive to the third part of his request at the time of his request or that it currently possesses any such records.

Lastly, the Department denied the second part of the Appellant's request for an "incident report" under KRS 197.025(1) because "[d]isclosure of such information could threaten the safety of staff, inmates, and the public." Under KRS 197.025(1), "no person shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person." The Office has historically deferred to the judgment of correctional facilities in determining whether the release of certain records would constitute a security threat under KRS 197.025(1).

The Office has previously found that an agency did not violate the Act when it denied a request for an Extraordinary Occurrence Report ("EOR") under KRS 197.025(1). *See e.g.,* 16-ORD-247; 12-ORD-123. On appeal, the Department explains that the "disclosure of the requested EOR would pose a legitimate security threat by potentially resulting in conflicts within the correctional institution, between inmates and staff as well as conflicts among inmates" and "the EOR would reveal sources of information and techniques of investigation." Under KRS 61.880(2)(c), the public agency has the burden of proof of sustaining its actions. On appeal, the Department has met this burden by adequately explaining why it denied the second part of the Appellant's request under KRS 197.025(1).

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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