



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN  
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KY 40601  
(502) 696-5300

**26-ORD-164**

April 16, 2026

In re: Branson Johnson/Kentucky Department of Corrections

**Summary:** The Kentucky Department of Corrections (“the Department”) did not violate the Open Records Act (“the Act”) when it did not provide records it does not possess.

### ***Open Records Decision***

On February 25, 2026, the Appellant submitted a request to the Department seeking the “complete payment records for [the] listed case number” including “each money order.” The Appellant also sought “all documentation within the file of probation and parole that was located in London KY,” including the “original orders from parole officer” to “bring money order into office.” Finally, the Appellant requested “other receipts that w[ere] paid directly to business and turned into and placed in file.”

In response, the Department explained that it does not possess any records responsive to the Appellant’s request. Specifically, it explained that it possesses no records having to do with the case number identified by the Appellant.<sup>1</sup> It further stated that the Jefferson County Circuit Court Clerk may possess responsive records and provided contact information for that agency. This appeal followed.

On appeal, the Appellant confirms that his request sought records related to the identified case number. For its part, the Department maintains that it does not possess records related to the identified case number in the Appellant’s probation and parole file. 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*, 172 S.W.3d at 341. If the requester makes a

---

<sup>1</sup> As an alternative basis for its denial of the Appellant’s request, the Department stated it was withholding probation and parole file records pursuant to KRS 439.510, incorporated into the Act by KRS 61.878(1)(l), which forbids the disclosure of “information obtained in the discharge of official duty by any probation or parole officer.”

*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 has not attempted to make a *prima facie* case that the Department possesses the identified emails. Thus, the Office cannot find that the Department violated the Act when it did not produce records it does not possess.<sup>2</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

#199

Distributed to:

Branson Johnson, Appellant  
Nathan Goens, Assistant General Counsel, Justice and Public Safety Cabinet  
Charles Bates, Staff Attorney III, Justice and Public Safety Cabinet  
Sara Talarigo, Paralegal, Justice and Public Safety Cabinet  
Ann Smith, Executive Staff Advisor, Justice and Public Safety Cabinet

---

<sup>2</sup> Because the Department does not possess any records responsive to the Appellant’s request, the Office need not determine whether the Department could have withheld any such records under KRS 439.510.