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-165

April 16, 2026

In re: Terrance Miles/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary ("the Penitentiary") did not violate the Open Records Act ("the Act") when it did not provide records it does not possess.

Open Records Decision

On February 21, 2026, the Appellant submitted a request to the Penitentiary to view (1) his "entire medical file," (2) emails between Wellpath employees and "any outside hospital, doctors, etc.," and (3) "all sick call forms [he] submitted while at" the Penitentiary between June 14, 2024, and that date of his request. In response, the Penitentiary denied the Appellant's request for his entire medical file because it was "too broad and overly vague," citing KRS 61.872(2). The Penitentiary denied that request for emails, stating that Wellpath is not a public agency and its records are not subject to the Act. And the Penitentiary granted the request for sick call forms. This appeal followed.

On appeal, the Penitentiary states that it mistakenly denied the Appellant's request to view his "entire medical file" and has made it available to him for viewing. "If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter." 40 KAR 1:030 § 6. The Appellant has confirmed that the Penitentiary has made his medical file available for viewing. Therefore, this portion of the appeal is moot.[1]

On appeal, the Penitentiary now states that it undertook a search for all emails sent to or from Wellpath employees and located no responsive records. Once a public agency states affirmatively that no further responsive records exist, the burden shifts

[1] The Appellant states that he declined to view his medical file, which he says means this portion of his appeal is not moot. However, because he confirmed that the medical file was "made available" to him, it is moot.

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 at 341. 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 has not attempted to make a *prima facie* case that the Penitentiary possesses the identified emails.[2] Thus, the Office cannot find that the Penitentiary violated the Act when it did not produce records 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

[2] Rather, he relies on *Burdette v. Commonwealth*, 664, S.W.3d 605 (Ky. 2023), which discusses who is a "state actor" for purposes of a criminal suspect's *Miranda* rights.

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Distributed to:

Terrance Miles #151766 , 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