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26-ORD-208

May 13, 2026

In re: Jeff Carpenter/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 are not “public records” within the meaning of KRS 61.870(2).

Open Records Decision

Inmate Jeff Carpenter (“the Appellant”) submitted a request to the Center for “a list of all phone numbers called” with his personal identification number between February 10 and April 5, 2026. In a timely response, the Center denied the request on the grounds that “Securus [Technologies] phone call information is provided by an outside vendor of the Kentucky Department of Corrections, and [the] Center does not have custody or control of these records,” and therefore they are not “public records within the meaning of KRS 61.870(2).” This appeal followed.

The Act defines “public record” as “all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.” KRS 61.870(2). On appeal, the Center argues that the requested records are not prepared, owned, used, in the possession of, or retained by the Center, but are “in possession of Securus,” and the “Center did not have a list of calls prepared for its own use.”

Once a public agency states affirmatively that it does not possess certain records, the burden shifts to the requester to make a *prima facie* case that it does possess them. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). A requester’s bare assertion that an agency possesses requested records is insufficient to make a *prima facie* case that the agency, in fact, possesses them. *See, e.g.*, 22-ORD-040. Rather, to make a *prima facie* case that the agency possesses or should possess the requested records, the requester must provide some statute, regulation, or factual support for his contention. *See, e.g.*, 21-ORD-177; 11-ORD-074.

Here, the Appellant does not dispute the Center's claim that it does not possess a list responsive to his request, but states he needs to obtain the information because he believes someone has been "using [his] ID number" without authorization. Thus, the Appellant has not made a *prima facie* case that the Center has anything more than a contractual right to obtain the requested information from Securus. An "agency's mere 'access' to electronic records, without more, does not make them 'public records' for purposes of the Act." 23-ORD-344. Rather, under KRS 61.870(2), the agency must in fact prepare, own, use, possess, or retain the requested records. *See, e.g.*, 26-ORD-179; 26-ORD-175. Here, the Appellant has not shown that to be the case. Accordingly, the Center did not violate the Act when it denied the Appellant's request.

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
Attorney General

/s/ James M. Herrick
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Distributed to:

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