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-233**

May 26, 2026

In re: Shawn Hammers/Little Sandy Correctional Complex

***Summary:*** The Little Sandy Correctional Complex ("the Complex") did not violate the Open Records Act ("the Act") by denying a request for copies of records that the agency does not possess or control and referring the requester to the agency that does possess the records.

***Open Records Decision***

On February 13, 2026, inmate Shawn Hammers ("the Appellant") submitted a request to the Complex for copies of "[t]ranscripts from [an] Adjustment hearing at [Green River Correctional Complex ("GRCC")] for DR #2025-0004078." The Complex received the Appellant's request on February 17, 2026, and responded the same day. The Complex denied the request and notified the Appellant that he would have to request copies of those records from GRCC. This appeal followed.

In his March 3, 2026, appeal, the Appellant notes that he previously requested and received "the same Exact DR #2025-0004078 of the Warden's Appeal" and paid 30 cents for the requested copies; a copy of his previous request is attached to his appeal.[1] Because he is "under the jurisdiction of the Department of Corrections," the Appellant contends that he is entitled to receive copies of all records "pertaining to" him regardless of where the records are stored. In response, the Complex reiterates that it "is not the custodian of the requested record" and, under KRS 61.872(4), it properly referred the Appellant to GRCC for the requested transcripts. The Complex further explains that records of adjustment hearings "are stored and maintained at the facility where the hearing was conducted." In addressing the Appellant's claim regarding his prior receipt of certain records related to the same adjustment hearing, the Complex notes, "The appeal to the warden referenced by Appellant in his Letter of Appeal was available for a previous [request] because it was scanned in as part of

[1] On January 22, 2026, the Appellant requested a "copy of my Warden["]s G.R.C.C. DR #2025-004078," rather than copies of transcripts from the adjustment hearing at GRCC regarding DR #2025-0004078.

the disciplinary report that is maintained in the Kentucky Offender Management System ('KOMS')."

The Complex "cannot afford a requester access to a record that it does not have or that does not exist, 99-ORD-98, and the agency discharges its duty under the Open Records Act by affirmatively so stating." 16-ORD-246 (citing 99-ORD-150). Further, a public agency is not statutorily required to "prove a negative" to refute an unsubstantiated claim that certain records exist. *Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005); 26-ORD-127; 11-ORD-037. Once a public agency states affirmatively that records do not exist, the burden shifts to the requester to make a *prima facie* case that the agency does possess the requested records. *See Bowling*, 172 S.W.3d at 341.

If the requester makes a *prima facie* case that the records do or should exist, then the public 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). However, a requester's bare assertion that a public agency must possess the requested records is not adequate to make a *prima facie* case that the agency does, in fact, possess the records. *See, e.g.*, 25-ORD-209; 22-ORD-040. Rather, to make a *prima fac*ie case that the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or factual support for that contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. "Merely asserting that additional records exist does not establish a *prima facie* case that they do or that an agency has failed to conduct an adequate search." 24-ORD-023; *see, e.g.*, 23-ORD-042.

Even assuming the Appellant made a *prima facie* case that the Complex does or should possess the requested transcripts by including a copy of his previous request asking for a copy of the related appeal, which the Complex granted, the Complex has rebutted the presumption that it possesses those records by explaining it was able to provide a copy of the appeal, *i.e.*, the record that was responsive to his previous request, because it was included as part of the disciplinary report scanned into KOMS. *See Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011) (holding that "when it is determined that an agency's records do not exist, the person requesting those records is entitled to a written explanation for their nonexistence"). Accordingly, the Complex did not violate the Act by denying the Appellant's request for copies of records that it does not possess or control. The Department complied with KRS 61.872(4) by referring the Appellant to GRCC for the requested transcripts and has adequately explained the reason for the seeming discrepancy between the Complex's disposition of his previous request and its denial of his current 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/ Michelle D. Harison
Michelle D. Harrison
Assistant Attorney General

#217

Distributed to:

Shawn Hammers, #324539
Charles B. Bates, Staff Attorney III, JPSC
Nathan Goens, Assistant General Counsel, JPSC
Sara Talarigo, Paralegal, JPSC
Ann Smith, Executive Staff Advisor, JPSC