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26-ORD-444

October 2, 2026

In re: James Savage/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary ("the Penitentiary") did not violate the Open Records Act ("the Act") when it redacted medical information under KRS 61.878(1)(a). The Penitentiary also did not violate the Act when it did not provide records it does not possess.

Open Records Decision

On August 18, 2026, inmate James Savage ("Appellant") submitted a request to the Penitentiary seeking "one copy of everything that was said about [him] and the names of who had something to say about [him]" at three "treatment team meetings." In response, the Penitentiary provided the Appellant with the minutes from the three meetings with medical information related to other inmates redacted under KRS 61.878(1)(a). The Penitentiary further explained that it does not possess a transcript documenting exactly what was said at the meetings. This appeal followed.

KRS 61.878(1)(a) exempts from disclosure "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." The Penitentiary explains that it "redacted medical and treatment information that was discussed relating to other inmates." The Attorney General has consistently recognized a significant privacy interest in medical information that outweighs the ordinary public interest in disclosure of public records. *See, e.g.*, 26-ORD-269; 25-ORD-279; 19-ORD-207; 18-ORD-186; 09-ORD-059; 06-ORD-209; 03-ORD-208. Here, the redacted portions of the minutes contained only information related to other inmates' medical treatment. That information is exempt under KRS 61.878(1)(a), and the Penitentiary did not violate the Act when it redacted that information.

Finally, the Penitentiary maintains that it does not possess a transcript documenting everything that was said about the Appellant at its meetings. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make a *prima facie* case that the requested record does or should

exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the record does 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). A requester's bare assertion that a public agency should or 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.*, 22-ORD-040. Rather, to make a *prima facie* case the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or other factual support for that contention. *See, e.g.*, 21-ORD-177; 11-ORD-074.

Here, the Appellant only complains that the record he received does not contain all information he desired. The Appellant has not made a *prima facie* case that the Penitentiary possesses a record documenting "everything that was said about [him] and the names of who had something to say about [him]." Thus, the Penitentiary did not violate the Act when it could not grant the Appellant's request for records it does not possess.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

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