



COMMONWEALTH OF KENTUCKY  
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**22-ORD-089**

May 10, 2022

In re: Roberto Ferdman/Louisville Metro Police Department

**Summary:** The Louisville Metro Police Department (the “Department”) violated the Open Records Act (“the Act”) when it failed to respond to a request it received under the Act.

***Open Records Decision***

On April 1, 2022, Roberto Ferdman (“Appellant”) submitted a request to the Department for copies of complete Professional Standards Unit (“PSU”) files related to three Public Integrity Unit (“PIU”) cases 15-013, 14-051, 08-469, and PSU case 08-068. The Appellant specified the scope of his request included audio or video recordings of interviews as well as any transcripts. On April 12, 2022, having received no response from the Department the Appellant initiated this appeal.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). A public agency may also delay access to responsive records if such records are “in active use, storage, or not otherwise available.” KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must also notify the requester of the earliest date on which the records will be available, and provide a detailed explanation for the cause of the delay. On appeal, the Department admits that it received the Appellant’s request on April 1, 2022, but did not issue any response until April 19, 2022. Accordingly, the Department violated the Act when it did not respond to the Appellant’s request within five business days.

After the appeal was initiated, the Department responded to the Appellant's request and stated "that PSU 08-068 was the PSU case associated with PIU 08-469, and [the Department] has confirmed that all records for PSU 08-068 were destroyed pursuant to the Kentucky Department for Libraries and Archives retention schedule that was in effect at the time of destruction." Regarding the Appellant's request for PSU cases related to PIU cases 15-013 and PIU 14-051, the Department states that there are "no PSU cases associated with either PIU case number."

Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to present a *prima facie* case that requested records do exist in the possession of the public agency. See *Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make 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). Moreover, if evidence supports a finding that requested records should exist but do not, the requester "is entitled to a written explanation for their nonexistence." *Epsilon v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011).

On appeal, the Department further explains that PIU cases involve the investigation of alleged criminal conduct by officers and PSU cases involve the investigation of alleged violations of Department procedures. Some PIU cases, but not all, will also generate an associated PSU case. The Department has confirmed that PIU cases 15-013 and 14-051 did not generate associated PSU cases, and the Appellant has presented no evidence to the contrary. Moreover, although the Department admits that records related to PSU case 08-068 existed at one time, the Department has explained why such records no longer exist. The records were destroyed in compliance with the Department's applicable records retention schedule. Accordingly, the Department did not violate the Act when it explained why records that previously existed no longer do, and when it was unable to provide records that do not exist in the Department's possession.

A party aggrieved by this decision may appeal it by initiating 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.

**Daniel Cameron**  
**Attorney General**

/s/Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

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