



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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**22-ORD-092**

May 11, 2022

In re: Chad Heath/LaRue County Attorney

**Summary:** The LaRue County Attorney (“the County Attorney”) did not violate the Open Records Act (“the Act”) when he denied a request for records that do not exist in the County Attorney’s possession.

***Open Records Decision***

Chad Heath (“the Appellant”) submitted a request to the County Attorney for a copy of any registration forms submitted by the County Attorney to the United States under the Foreign Agents Registration Act (“FARA”) and the Foreign Corrupt Practices Act (“FCPA”). In a timely written response, the County Attorney informed the Appellant that the County Attorney did not possess any records responsive to the request. This appeal followed.

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).

Here, the Appellant does not even attempt to make a *prima facie* case that the County Attorney should possess the requested records. Nor could he, because neither FARA nor FCPA apply to the County Attorney. As this Office has repeatedly explained to the Appellant, FARA applies only to individuals who advocate or lobby the United States government on behalf of a foreign

government.<sup>1</sup> 22 U.S.C. § 611 *et seq.*; *see also* 22-ORD-094; 22-ORD-058 n.2. If the individual is not advocating on behalf of a foreign government, then FARA does not apply to that person. The FCPA is similar, but prohibits an individual from making payments to a foreign official to entice (*i.e.*, bribe) that foreign official to take official action. 15 U.S.C. §§ 78dd-1, *et seq.* The FCPA also prohibits foreign firms from attempting to bribe United States officials on United States territory. *Id.* The Appellant offers no proof that the County Attorney is advocating on behalf of, or bribing, foreign officials. There is no reason why the County Attorney would possess records responsive to the Appellant's request. Therefore, the County Attorney did not violate the Act when he denied the Appellant's request for records that do not exist.

A party aggrieved by this decision may appeal it by initiating 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 e-mailed to OAGAppeals@ky.gov.

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

/s/Marc Manley  
Marc Manley  
Assistant Attorney General

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<sup>1</sup> The Appellant has filed multiple appeals against court officials, law enforcement agencies, and now a county attorney. *See, e.g.*, 22-ORD-094; 22-ORD-086; 22-ORD-075; 22-ORD-067; 22-ORD-058; 22-ORD-036; 22-ORD-035; 22-ORD-034; 22-ORD-033. Throughout those appeals the Appellant has made statements indicating his belief that the United States government is not a government at all, but is instead a "foreign corporation." Presumably, because the Appellant believes the United States government is a foreign corporation he thinks that public agencies in the Commonwealth must file registration statements under FARA and the FCPA. Yet the Appellant cites *federal law* for the proposition that these public agencies must file these registration statements. And here, in addition to his appeal, the Appellant claims that he wishes to file a complaint against the County Attorney for failing to register under FARA and the FCPA. This Office has no jurisdiction to entertain such a complaint under KRS 61.880(2), as it does not pertain to the Open Records Act.

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Distributed to:

Chad Heath

Kyle W. Williamson