



COMMONWEALTH OF KENTUCKY
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22-ORD-094

May 11, 2022

In re: Chad Heath/LaRue County Sheriff's Office

Summary: The LaRue County Sheriff's Office ("the Sheriff's Office") did not violate the Open Records Act ("the Act") when it could not provide records that do not exist.

Open Records Decision

On April 8, 2022, Chad Heath ("Appellant") requested that the Sheriff's Office provide a copy of "filing(s) that are registered with the U.S. Department of Justice pursuant to the FARA (Foreign Agents Registration Act) Act [*sic*] of 1938" for the LaRue County Sheriff and a deputy sheriff. The Sheriff's Office responded that it had no records responsive to the request. This appeal followed.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist in the agency's possession. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not established a *prima facie* case that the requested records should exist. As this Office has previously noted, the Foreign Agents Registration Act, 22 U.S.C. § 611 *et seq.*, applies only to entities in the United States that are operating on behalf of a foreign government, or foreign individuals, for political or financial purposes. *See 22-ORD-058 n.2*. On appeal, the Sheriff's Office asserts that neither the Sheriff nor the deputy sheriff is registered under that statute. Because the Appellant has presented no evidence that either the Sheriff or the deputy sheriff is engaged in any activity on behalf of foreign actors, there is no reason the Sheriff's Office should have the records requested by the Appellant. Accordingly, the Sheriff's Office did not violate the Act.

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/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

Mr. Chad Heath
Sheriff Russell McCoy
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