



COMMONWEALTH OF KENTUCKY  
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**22-ORD-098**

May 19, 2022

In re: Michael Murphy/Gallatin County Fiscal Court

**Summary:** This Office cannot find that the Gallatin County Fiscal Court (the “Fiscal Court”) violated the Open Records Act (“the Act”) when it denied a request for records that do not exist within its possession.

***Open Records Decision***

Michael Murphy (“Appellant”) submitted a request that contained three subparts to the Fiscal Court for records related to the Gallatin County Airport. In a timely response, the Fiscal Court provided responsive records to the first two subparts of the request, but denied the third subpart, in which the Appellant requested “Airport Board Meeting Minutes for [the] last eight (8) months.” The Fiscal Court denied this subpart of the request because “[t]he Gallatin County Airport Board does not have a written record of minutes, in the last eight months.” The Appellant then initiated this appeal, and challenges only the Fiscal Court’s denial of his request to inspect meeting minutes of the Gallatin County Airport Board (“Airport Board”).

On appeal, the Fiscal Court again states affirmatively that it does not possess any minutes of the Airport Board from the previous eight months. The Fiscal Court claims that all actions taken regarding the Gallatin County Airport have occurred at meetings of the Fiscal Court, not at meetings of the Airport Board, and that such actions are recorded in meeting minutes of the

Fiscal Court.<sup>1</sup> The Fiscal Court claims that the Airport Board has not taken minutes of its meetings because no action has been taken at such meetings, and thus, the Airport Board did not find it “necessary” to take minutes.

The Fiscal Court has stated affirmatively, both initially and on appeal, that it does not possess any minutes of the Airport Board. 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).

To make a *prima facie* case, the Appellant cites KRS 61.835 to support his claim that the meeting minutes he requested should exist. Under KRS 61.835, “[t]he minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.” This Office has historically found that a public agency must maintain minutes “even if those minutes reflect only that the public agency convened, approved the minutes of the last meeting, and adjourned.” *See* 14-OMD-207; 00-OMD-96; 95-OMD-64. Thus, the Appellant has made a *prima facie* case that the Airport Board should possess minutes of its prior meetings, even if no action was taken at such meetings.<sup>2</sup>

Because the Appellant has made a *prima facie* case that minutes of the Airport Board meetings should exist, the burden shifts to the Fiscal Court to explain why no such records exist. The Fiscal Court explains that no meeting

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<sup>1</sup> It is not clear whether the Fiscal Court has provided copies of its own minutes to the Appellant. The Appellant did not request meeting minutes of the Fiscal Court.

<sup>2</sup> This is an appeal filed under KRS 61.880 to enforce the Open Records Act. It is not an appeal filed under KRS 61.846 to enforce the Open Meetings Act. Whether the Airport Board’s failure to record minutes is a violation of the Open Meetings Act is not properly before this Office. *See Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 871-72 (Ky. App. 2021).

minutes exist because the Airport Board did not think it necessary to take minutes at meetings where no action was taken. Thus, the Fiscal Court has sufficiently explained why no responsive records exists – the records were never created, KRS 61.835 notwithstanding. Because the Fiscal Court has explained why no responsive meeting minutes exist, the Fiscal Court did not violate the Open Records Act when it was unable to provide records that do not exist.

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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