



COMMONWEALTH OF KENTUCKY
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22-ORD-115

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In re: Christopher Cecil/Franklin County Fiscal Court

Summary: The Franklin County Fiscal Court (the “Fiscal Court”) did not violate the Open Records Act (“the Act”) when it could not provide copies of records that do not exist within its possession.

Open Records Decision

Christopher Cecil (“Appellant”) submitted a request to the Fiscal Court for copies of “[a]ll ‘Boil Water’ advisory dates between January 1, 2016 [and] April 18, 2022” for the Farmdale Water District. The Appellant also requested the Farmdale Water District’s board meeting minutes for the same period. In a timely response, the Fiscal Court denied the request because it “does not retain records for the Farmdale Water District.” This appeal followed.

On appeal, the Fiscal Court again states affirmatively that it does not possess any responsive records because it is not the records custodian for the Farmdale Water District. As proof, the Fiscal Court attaches a copy of the Farmdale Water District’s “By-Laws” which appears to show that the Farmdale Water District is a separate entity apart from the Fiscal Court.

In both responses the Fiscal Court affirmatively stated that it does not possess any responsive records. 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 stated that he had requested the same records from other public agencies and those requests were unsuccessful. But the Appellant did not attempt to make a *prima facie* case that the Fiscal Court should possess the requested records. Even if the Appellant had made a *prima facie* case, the Fiscal Court has sufficiently explained that the Farmdale Water District is a legal entity that is separate and distinct from the Fiscal Court. Thus, the Fiscal Court did not violate the Act when it could not provide copies of records that do not exist in its 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:

Christopher Cecil
Rick Sparks