



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

22-ORD-259

December 6, 2022

In re: Tony Young/City of Campbellsville

Summary: The City of Campbellsville (“the City”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist within its possession.

Open Records Decision

On October 26, 2022, Tony Young (“Appellant”) sent a request to the City for a copy of all correspondence between two specific individuals and the Kentucky State Police from January 1, 2019 to October 26, 2022. On November 3, 2022, having received no response from the City, 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). However, this Office has consistently found that it is unable to resolve factual disputes between a requester and a public agency, such as whether a requester received an agency’s response to a request. *See* 21-ORD-233 (agency claimed it issued a response but the requester claimed he did not receive it); *see also* 22-ORD-125 (agency claimed it did not receive the request); 22-ORD-100 (same); 22-ORD-051 (same); 21-ORD-163(same).

Here, the City provides a copy of its response, dated November 2, 2022, and claims it mailed this response to the Appellant that day, which was the fifth business day after the Appellant submitted his request. The City’s response stated it had searched for responsive records but none exist. Accordingly, this Office cannot resolve the factual dispute between the parties about whether the City issued the response or whether the Appellant received it, and therefore cannot find that the City violated the Act.

On appeal, the City reaffirms that it does not possess any responsive records. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does or should exist. See *Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 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 has not established a *prima facie* case that responsive records exist. Therefore, the City did not violate the Act when it did not provide records it does not possess.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Tony W. Young
Cary Noe
John Miller