



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

23-ORD-032

February 13, 2023

In re: Lawrence Trageser/Jeffersontown Fire Protection District

Summary: The Jeffersontown Fire Protection District (“the District”) did not violate the Open Records Act (“the Act”) when it did not provide a record that does not exist.

Open Records Decision

On August 31, 2022, Lawrence Trageser (“Appellant”) requested an electronic copy of “[t]he investigation report on [a District employee], which lead [sic] to his disciplinary action and charges.” In a timely response, the District stated that no such record existed. This appeal followed.

Once a public agency states affirmatively that a requested record does not exist, the burden shifts to the requester to present a *prima facie* case that the record does or should exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, in an attempt to establish that an investigation report should exist, the Appellant cites KRS 75.130(2). Under that statute, “[a]ny person may file charges against a member or employee of a fire protection district. . . . The chairman of the board of trustees shall, after conducting or having conducted *any inquiry or investigation which may be necessary*, determine if probable cause appears. The chairman shall prefer charges to the board of trustees against any member or employee against whom probable cause exists, of conduct justifying the dismissal or punishment of the member or employee.” KRS 75.130(2) (emphasis added). The statute, however, does not require an investigation in all cases, nor does it require a “report” of any such investigation be created. Thus, the Appellant has not presented a *prima facie* case that an “investigation report” should exist.

Nevertheless, the Appellant argues that an investigation report “does exist, in that, the ‘INVESTIGATIVE’ [sic] report contains many documents with many

different labels, such as the complaint, testimony, evidence, charges and reprimands associated with the alleged wrongful actions.” Thus, the Appellant argues, “an ‘INVESTIGATIVE’ [*sic*] report did have to be created, if only in documenting the complaint, charges and reprimands.” Under KRS 61.872(3)(b), it is incumbent on a person requesting copies of public records to “precisely describe[] the public records which are readily available within the public agency.” Here, the Appellant requested a record that he precisely described as an “investigation report.” He did not request or precisely describe a “complaint,” “testimony,” “evidence,” “charges,” or “reprimands,” each of which is a separate type of record and none of which is synonymous with “investigation report.” Nor did the Appellant request all records related to the specific disciplinary matter, which would have been a proper request. *See Univ. of Ky. v. Kernel Press, Inc.*, 620 S.W.3d 43, 48 n.2 (Ky. 2021). Instead, the Appellant requested an “investigation report,” which does not exist. Accordingly, the District did not violate the Act when it denied the Appellant’s request.

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

#18

Distribution:

Mr. Lawrence Trageser
Maurice A. Byrne, Jr., Esq.
Sean F. Dreisbach, Chief