



COMMONWEALTH OF KENTUCKY
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23-ORD-130

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In re: Carl Ball/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

Open Records Decision

Carl Ball (“Appellant”) submitted a request to KSP for the body camera and dashboard camera footage from a traffic stop that took place on December 2, 2022. KSP denied his request because no responsive records exist. This appeal followed.

On appeal, KSP maintains that the requested footage does not exist. 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 the requested records exist. Therefore, KSP did not violate the Act when it did not provide the requested records. Further, even if the Appellant had established a *prima facie* case, KSP sufficiently explains on appeal why the records requested by the Appellant do not exist. According to KSP, neither of the troopers involved in the stop had body worn cameras issued to them at the time of the stop. And the vehicle that was used in the stop was not equipped with a dashboard camera at the time of the stop. Thus, even if the Appellant had established a *prima facie* case that responsive records should exist, KSP has adequately explained why the records do not exist. Therefore, KSP did not violate the Act.

A party aggrieved by this decision may appeal it by initiating an 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 emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

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

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Distributed to:

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