



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-142

June 22, 2023

In re: John Beam/Office of the Attorney General

Summary: The Office of the Attorney General (“the Office”) did not violate the Open Records Act (“the Act”) when it could not provide records that are not within its custody or control.

Open Records Decision

On May 16, 2023, John Beam (“Appellant”) requested the Office provide “all recordings and transcripts of 911 calls, Computer-aided dispatch systems, Body-worn cameras, [and] Dash cameras, relating to an incident on” July 7, 2020, between the Appellant and certain officers of the Shepherdsville Police Department (“the Department”) and the Bullitt County Sheriff’s Office (“the Sheriff’s Office”), as well as “[a]ll documentation filed by [the officers] on the use of force by arresting officer or those witnessing use of force” in that incident. In a timely response, the Office stated it was “not the custodian of investigatory records maintained by” the Department or the Sheriff’s Office, but those agencies might possess records responsive to the Appellant’s request.¹ The Office provided URL links to the open records pages of both agencies’ websites. This appeal followed.

A public agency “is responsible only for those records within its own custody or control.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)). Once a public agency states affirmatively that a record is not within its custody or control, the burden shifts to the requester to present a *prima facie* case that the requested record exists. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant merely claims “they [the Office] are

¹ See KRS 61.872(4) (“If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.”).

the custodians of these records and they [*sic*] only ones responsible for their retention or destruction.” But a requester’s bare assertion that an agency must possess requested records is insufficient to establish a *prima facie* case that the agency actually possesses such records. *See, e.g.*, 22-ORD-040. Rather, to present a *prima facie* case that the Office possesses or should possess the requested records, the Appellant must provide some statute, regulation, or factual support for his contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. Therefore, the Appellant has not presented a *prima facie* case that the Office possesses any of the requested records. Thus, the Office did not violate the Act when it did not provide records that are not within its custody or control, or when it provided the contact information for the records custodians of two agencies that may possess the requested records.

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/ James M. Herrick
James M. Herrick
Assistant Attorney General

#214

Distributed to:

John E. Beam
Nicholas J. Hunt
Jacob P. Ford