



COMMONWEALTH OF KENTUCKY  
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**23-ORD-181**

July 25, 2023

In re: Lisa Hieneman/Kentucky State Police

**Summary:** The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it denied a request for records that do not exist within its possession.

***Open Records Decision***

Lisa Hieneman (“Appellant”) submitted a request to KSP for “[a]ll records relating to investigation” of a specific person “that was initiated in Ashland, Boyd County[,] Kentucky at Safe Harbor on April 13, 2023” by a complaining witness “alleging improper action with a minor by” the specific person. In a timely response, KSP denied the request because it “was unable to locate any responsive records” and “no such record exists within [the] agency.” KSP suggested that the Appellant contact the Ashland Police Department regarding the requested records. This appeal followed.

On appeal, KSP once again states 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 custody or control. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that records do or should exist in the agency’s custody or control, “then the agency may also be called upon to prove that its search was adequate.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

Here, to make a *prima facie* case that the records do exist within KSP's custody or control, the Appellant states she has "personal information that the [KSP] trooper arrived on the scene for this investigation, interviewed several purported witnesses to the event, and was present for over an hour." The Appellant further states, "It is not conceivable that the trooper would have responded to the call, [*sic*] and made no notation of any nature as to his response, let alone spend that much time and make no writing as to the investigation undertaken." But KSP disputes the Appellant's assertions and states it has no record of its troopers ever responding to the incident the Appellant described in her request.<sup>1</sup> Furthermore, a requester's bare assertion that an agency should possess requested records is insufficient to establish a *prima facie* case that the agency possesses such records. *See, e.g.*, 23-ORD-142; 22-ORD-040. As a result, the Appellant failed to make a *prima facie* case that the records do exist within KSP's possession. Moreover, KSP has explained on appeal "that a diligent search of Kentucky's Open Portal Solution ('KyOPS') website did not yield any records; nor did a search by Post 14 of its Computer-Aided Dispatch ('CAD') system." Therefore, this Office is unable to find that KSP violated the Act.

A party aggrieved by this decision may appeal it by initiating an 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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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<sup>1</sup> Conflicting factual narratives, such as whether a KSP trooper responded to the incident as the Appellant described, is not something the Office can resolve in an Open Records Act appeal. *See, e.g.*, 21-ORD-163.

Lisa Hieneman  
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