



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-196

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In re: Peter Trzop/Nelson County School District

Summary: The Nelson County School District (“the District”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

Open Records Decision

On June 5, 2023, Peter Trzop (“Appellant”) requested “all information, records, files, or medium [*sic*] of communication as related to the academic/legal review of [his] daughter’s academic file,” including records related to her status as Nelson County High School valedictorian and the changing of a specific grade. In response, the District provided several records, which it claims “constituted the totality of the records [it] possessed that were responsive to” the request. On June 15, 2023, the Appellant emailed the District and its attorney claiming the response was “incomplete” because it did not include alleged communications with a teacher and with the District’s attorney. The Appellant then requested the attorney’s billing statements related to his open records requests. The same day, the Appellant submitted another request for “any written documentation, communication, notes, etc. relating to the changing of [his] daughter[’s] grade(s).” In response, the District stated it was “not in possession of any additional documents responsive to this request” and had not received any legal bills related to the subject of the request. This appeal followed.

On appeal, the District states it has subsequently received legal bills related to the Appellant’s open records requests and has provided those to him. Accordingly, the portion of this appeal regarding the Appellant’s request for attorney billing statements related to his open records requests is moot. *See* 40 KAR 1:030 § 6. However, the Appellant still claims the District possesses additional records, including attorney billing statements related to changing his daughter’s grade. But

the District states no such records exist because legal counsel was not involved in the grade change. Additionally, the Appellant claims the District possesses a formal “complaint letter” and communications from a teacher and an administrator, which was not provided to him. The District, however, denies the existence of any additional records responsive to the Appellant’s request.

Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to present a *prima facie* case that additional records do exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). A requester must provide some evidence to support a *prima facie* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record, or other factual support for the existence of the records. *See, e.g.*, 21-ORD-177; 11-ORD-074. A requester’s bare assertion that certain records should exist is insufficient to establish a *prima facie* case that the records actually do exist. *See, e.g.*, 22-ORD-040. Here, the Appellant has not established a *prima facie* case that additional records exist. Accordingly, the Office cannot find that the District violated the Act when it did not provide records that do not exist.

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
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Assistant Attorney General

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