



COMMONWEALTH OF KENTUCKY
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23-ORD-200

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In re: John Fairley/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

Inmate John Fairley (“Appellant”) submitted a request to KSP to inspect records relating to “chain of custody, video/audio, body cam [footage], all laboratory evidence, search warrants, [and] witness statements” pertaining to a specific criminal case. In a timely response, KSP stated it had searched for all responsive records and located only records responsive to the Appellant’s request for “chain of custody and laboratory evidence.” KSP granted the Appellant’s request for copies of those records. The Appellant then initiated this appeal, claiming KSP must possess additional records.

On appeal, KSP continues to assert that it provided all records it possesses that are responsive to the Appellant’s request. 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 KSP possesses, or should possess, additional records responsive to his request. Therefore, KSP is not

required to explain the adequacy of its search, and it did not violate the Act when it provided all responsive records it possesses.¹

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.

Daniel Cameron
Attorney General

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

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Distributed to:

John Fairley #241698
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Abbey Hub

¹ After this appeal was initiated, KSP determined that the Hopkinsville Police Department conducted the investigation related to the criminal case and that agency is likely the official custodian of the requested records. 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.”).