



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-208

August 11, 2023

In re: Rebecca Mash/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it provided all records in its custody or control that were responsive to a request.

Open Records Decision

On June 7, 2023, Rebecca Mash (“Appellant”) requested copies of “any and all records associated with” a narcotics investigation conducted in London, Kentucky, “and the surrounding areas that began possibly during the fall months of 1981, possibly November or before.” The Appellant also named seven “defendants involved in this case.” In a timely response, KSP provided 27 pages of records it retrieved from archives related to a 1982 case investigated by its London post.¹ After receiving the records, the Appellant stated she was “confident there must be more records.” KSP then conducted another search using the names of the offenders the Appellant provided and concluded there were no additional records. After an additional inquiry from the Appellant, KSP conducted a third criminal history search and informed the Appellant there were no additional records responsive to her request. This appeal followed.

Once a public agency states affirmatively that it does not possess any additional records, the burden shifts to the requester to present a *prima facie* case that additional records do exist. *See Bowling v. Lexington-Fayette Urban Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that additional records do or should exist, “then the agency may also be called upon to prove that its search was adequate.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406

¹ In reliance on KRS 61.878(1)(a), KSP redacted personal information including Social Security numbers, addresses, and telephone numbers. The Appellant does not question these redactions on appeal.

S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). To support a claim that the agency possesses responsive records that it did not provide, the Appellant must produce some evidence that calls into doubt the adequacy of the agency's search. *See, e.g.*, 95-ORD-96. Here, the Appellant provides what purports to be a page of testimony from an FBI agent claiming that KSP "had been conducting a surveillance type investigation for several weeks prior to" November 20, 1981. This, however, does not constitute *prima facie* evidence that KSP possesses any more records than it has provided to the Appellant.² Because KSP provided all responsive records in its custody or control, it 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/ James M. Herrick
James M. Herrick
Assistant Attorney General

#312

Distributed to:

Ms. Rebecca Mash
Michelle D. Harrison, Esq.
Ms. Stephanie Dawson
Ms. Abbey Hub

² Indeed, in her appeal letter, the Appellant states she "now believe[s]" the records she is seeking "never existed." She further claims her "appeal is not to look for records that aren't there," but to have the Attorney General "initiate an investigation [of a] corrupt prosecutor." Although the Office is empowered to conduct criminal investigations, such an investigation is beyond the scope of the Office's review under KRS 61.880(2).