



COMMONWEALTH OF KENTUCKY
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23-ORD-217

August 16, 2023

In re: Bradley Morris/Mayfield Police Department

Summary: The Mayfield Police Department (the “Department”) violated the Open Records Act (“the Act”) when it failed to respond to a request within five business days of receiving it. The Office is unable to find that the Department violated the Act when it denied a request for records that do not exist.

Open Records Decision

On July 5, 2023, inmate Bradley Morris (“Appellant”) submitted a request to the Department for a copy of all the medical records related to a specific victim in his criminal case. Having received no response by July 18, 2023, the Appellant initiated this appeal.¹

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” Here, the Appellant claims he submitted his request on July 5, but did not receive a response within five business days. On appeal, the Department states it received the Appellant’s request on July 11, 2023, and that “for whatever reason, [it] did not respond to [the Appellant’s] request until July 19, 2023.” Accordingly, the Department violated the Act.

In its July 19, 2023, response, the Department denied the Appellant’s request because “there are no medical records in” the Appellant’s criminal file. Once a public

¹ Although the Appellant’s request for an appeal is undated, it is postmarked July 18, 2023.

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).

To make a *prima facie* case that the requested medical records do exist within the custody and control of the Department, the Appellant merely asserts that he “has made a *prima facie* demonstration that [the Department] has the records.” The Office has previously found that a requester's bare assertion that an agency possesses the requested records is not enough to establish a *prima facie* case that the agency actually possesses them. See, e.g., 23-ORD-181; 23-ORD-142; 22-ORD-040. Here, the Appellant's bare assertion is not enough to make a *prima facie* case that the requested records exist. As a result, the Office cannot find that the Department violated the Act when it denied a request for records that do not exist.

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
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s/ Matthew Ray
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Distributed to:

Bradley Morris #188310

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