



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-305

November 14, 2023

In re: Eric Cook/Ashland Police Department

Summary: The Ashland Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it denied a request for a record that does not exist.

Open Records Decision

Eric Cook (“Appellant”) submitted a request to the Department for a copy of a police report he believes a specific person filed against him on September 14 or September 15, 2023. The incident giving rise to the investigation allegedly happened in Florida. In a timely response, the Department denied his request because “[n]o police report was made or filed” by the identified person during the time period specified in the request. This appeal followed.

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 exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005).

Here, in an attempt to make a *prima facie* case, the Appellant provides a document he claims proves the Department took pictures during an investigation allegedly involving him. The document refers to a “report” where “statements” were taken by “HR.” However, the Department has already provided the Appellant with a copy of the referenced “HR” report. The Department also provided him with copies of “all pictures” it obtained and the “police report from the investigating agency in Florida.”

On appeal, the Department again states that no records responsive to the Appellant's request exist within its possession. The Department explains that it took pictures of the victim's injury at the request of the victim's supervisor at an "abuse shelter" because the shelter has specialty photography equipment. The Department states those photographs were provided to the Appellant as well as a copy of a police report filed in Florida that is related to the incident. However, the Department states the alleged victim never filed a formal complaint against the Appellant regarding the incident, and therefore, it did not create a police report.

In contrast, the Appellant asserts that the police report he requested must exist because the Department took photographs related to the incident. However, the Office has found that a requester's bare assertion alone is not enough to establish a *prima facie* case that a record exists. *See, e.g.,* 23-ORD-262; 23-ORD-217; 23-ORD-181; 23-ORD-142; 22-ORD-040. Similarly, the Appellant's bare assertion here does not establish a *prima facie* case that the Department created a police report regarding the incident. Therefore, the Department did not violate the Act when it denied a request for a record that does 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
Attorney General

s/ Matthew Ray
Matthew Ray
Assistant Attorney General

#462

Distributed to:
Eric Cook
Todd Kelley
James H. Moore, III