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**23-ORD-309**

November 14, 2023

In re: Vivian Miles/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. KSP also did not violate the Act when it denied a portion of the request that sought information without describing public records to be inspected.

***Open Records Decision***

Vivian Miles (“Appellant”) submitted a request to KSP seeking: (1) records “identifying” the “date” the state DNA database was moved or copied to the “private data-basing [sic] Ande FAIRS Software”; (2) the number of “investigative leads or hits from [the] copied database”; and (3) the number of “trained non-technical operators” who “have used Ande Rapid DNA, A-Chips and those [sic] locations.” KSP stated it possessed no records responsive to the first request, and it denied the second and third requests as requests for information rather than requests to inspect public records. This appeal followed.

On appeal, KSP explains it searched for a record that identifies the date the state DNA database was moved or copied to the “private data-basing Ande FAIRS Software,” but no such record exists. 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 makes 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).

The Appellant attached several records to her original request which she asserts “show that there should be a date (record) for when the state DNA Database was mirrored-copied [*sic*] to FAIRS.” However, the records the Appellant attached only support the existence of the FAIRS software. The records do not establish a *prima facie* case that KSP possesses a record identifying the date the state DNA Database was “copied to FAIRS.” Therefore, KSP did not violate the Act when it did not provide records responsive to this portion of the Appellant’s request.

KSP also maintains the second and third requests “pertained to information” and KSP is not “obligate[d] to honor a request for information.” The second request sought the number of certain investigative leads or hits and the third request sought the number of certain operators and the locations of those operators. These requests do not describe public records to be inspected, but rather, seek information. *See, e.g.*, 21-ORD-014 (holding an agency properly denied a request seeking “the total number” of unemployment claims filed). The Act does not require public agencies to fulfill requests for information, but only requests for describable public records. KRS 61.872; *Dep’t of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”). Accordingly, KSP did not violate the Act when it denied the second and third parts of the Appellant’s request because they sought information without describing public records to be inspected.

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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/ Zachary M. Zimmerer  
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Distributed to:

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