



COMMONWEALTH OF KENTUCKY  
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**23-ORD-323**

December 5, 2023

In re: John Fairley/Hopkinsville Police Department

**Summary:** The Hopkinsville Police Department (“the Department”) 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 the Department seeking records related to the prosecution of the criminal case against him.<sup>1</sup> In response, the Department stated that the only responsive records in its possessions are witness statements that were provided to the Appellant, with personal information redacted, pursuant to KRS 61.878(1)(a).<sup>2</sup> This appeal followed.

The Appellant asserts that he has been “denied these records that should exist.” In response, the Department states that it has performed several searches for the requested records but additional records “do not exist.” 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*,

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<sup>1</sup> Specifically, the Appellant sought the “names, documentation, reports, statements of officers in drug unit [*sic*] and informants that provided [a specific detective] with information about [his] criminal case.” He also sought “reports, names, documentation, [and] statements of other individuals interviewed by [a specific detective and the Hopkinsville Police Department] pertaining to [his] case.”

<sup>2</sup> The Department’s redactions to the statements are not at issue in this appeal, as the Appellant asserts only that additional records should exist.

172 S.W.3d at 341). Here, the Appellant has not made a *prima facie* case that the Department possesses additional records. Therefore, the Department did not violate the Act when it did not provide them.

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**  
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s/ Zachary M. Zimmerer  
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Distributed to:

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