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**23-ORD-330**

December 13, 2023

In re: Mikayla D. Ford/Kentucky Board of Cosmetology

**Summary:** The Kentucky Board of Cosmetology (“Board”) did not violate the Open Records Act (“the Act”) when it did not provide records that either do not exist or were not “precisely describe[d]” in the request.

***Open Records Decision***

Mikayla Ford (“Appellant”) submitted a request to the Board seeking “minutes and/or any documentation for board hearings from January 1, 2021 up to October 1, 2023.” In response, the Board provided “all documents that could reasonably be deduced as responsive to [her] request.” This appeal followed.

The Appellant claims “certain records” she “believe[s] to exist were not produced.” First, the Appellant states that she was given draft copies of meeting minutes from the Board’s meetings in 2021 instead of final copies because all minutes produced for that year contained a “draft” watermark. Second, the Appellant states the Board did not produce “Board Meeting Agendas” or documents provided to Board members for any meeting. Finally, she claims minutes should exist, but were not provided, for meetings that allegedly occurred in August and December 2022, and in July, August, and September 2023.

Regarding the Board’s meeting minutes from 2021, the Board explains on appeal that the Appellant was given the final versions, but the person responsible for creating the minutes had failed to remove the watermarks. The Office has long held that it cannot resolve factual disputes between the parties to an appeal. *See, e.g.*, 23-ORD-027; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81. Accordingly, the Office is unable to find that the Board violated the Act when it provided meeting minutes that it states are final but contain watermarks indicating the records are drafts.

Regarding the Appellant's assertion that additional meeting minutes should exist for certain meetings that allegedly occurred in 2002 and 2023, the Board explained in its original response that it had provided "all documents that could reasonably be deduced as responsive to [the Appellant's] request." 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).

Here, the Appellant attached all meeting minutes that were produced by the Board. The minutes for each meeting identify the month of the previous meeting and recite approval of the minutes taken at the previous meeting. The minutes do not indicate that meetings took place in August 2022 or in July, August, or September 2023, or that minutes were created or approved for such meetings.<sup>1</sup> While it is true that agencies subject to the Open Meetings Act are required to take minutes at every meeting and approve them at the next meeting, KRS 61.835, the Appellant has not established a *prima facie* case that the Board met in August or December 2022, or in July, August, or September 2023. As such, she has not established a *prima facie* case that additional meeting minutes should exist.<sup>2</sup>

Finally, the Board claims on appeal it did not provide copies of the Board's agendas for meetings because it interpreted the Appellant's request as seeking only meeting minutes. It is true the Appellant did not specifically identify meeting agendas in her request. However, the Appellant's request stated she was seeking minutes "and/or any documents for Board hearings" during the relevant period. As such, she clearly sought more records than just meeting minutes. Nevertheless, under KRS 61.872(3)(b), a person seeking to receive copies of records by mail must "precisely describe" the records to be inspected. If the Appellant wanted to inspect meeting agendas, she should have specifically identified that type of record in her request to the Board. *See, e.g.*, 22-ORD-184 (the agency did not violate the Act by failing to provide copies of social media posts when a request for all "public statements" did not specifically identify social media posts as records sought for inspection). Accordingly,

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<sup>1</sup> The February 2, 2023, meeting minutes indicate the Board approved minutes for its December 2022 meeting. However, the Appellant notes that meeting minutes dated February 7, 2022, may actually be the minutes for the December 2022 meeting. The Office cannot resolve the factual dispute about whether the February 7, 2022, minutes are actually the minutes of the December 2022 meeting.

<sup>2</sup> Nevertheless, on appeal, the Board conducted an additional search and located minutes for meetings held in December 2022 and September 2023. Any dispute regarding those minutes is now moot. *See* 40 KAR 1:030 § 6. The Board further states no meetings were held in the other months about which the Appellant complains.

the Board did not violate the Act when it did not provide copies of meeting agendas to the Appellant.

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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