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23-ORD-350

December 28, 2023

In re: Gerald Chapman/Daviess County Public Library

Summary: The Daviess County Public Library ("the Library") did not violate the Open Records Act ("the Act") when it provided all responsive records in its custody or control.

Open Records Decision

On November 10, 2023, Gerald Chapman ("Appellant") requested "[a]ll communications including but not limited to emails and texts from and between all current and former [Library] board members, [the Library Director,] and library staff concerning the Daviess County Citizens for Decency audit, the subsequent book review, relocation of books and proposed changes." In response, the Library Director[1] provided 16 emails and 34 messages sent via Microsoft Teams. The Appellant then stated he "believe[d]" there were "additional emails between board members" that had not been provided, including emails from the current board chair to the Director. The Director replied that she had provided the Appellant all responsive records to which she had access, and that she had requested the board members to supply any additional responsive records in their possession. She advised the Appellant that the records she provided were "all [she had] been copied on or sent directly." This appeal followed.

Once a public agency states affirmatively that it does not possess any additional records, the burden shifts to the requester to present a *prima facie* case that additional records do exist. *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 additional records do or should exist, "then the agency may also be called upon to prove that its search was adequate." *City of Ft. Thomas v. Cincinnati Enquirer,* 406

[1] For purposes of this appeal, it is presumed that the Library Director is the official custodian of records, or the authorized designee of the official custodian, within the meaning of KRS 61.880(1).

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S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling,* 172 S.W.3d at 341). To support a claim that the agency possesses responsive records that it did not provide, the Appellant must produce some evidence that calls into doubt the adequacy of the agency's search. *See, e.g.*, 95-ORD-96. Here, the Appellant claims to "know for a fact" that additional responsive emails exist, but provides no evidence in support of his claim. The bald assertion that records should exist is not sufficient to establish a *prima facie* case that they do exist. *See, e.g.,* 23-ORD-042. Because the Library provided all responsive records it possesses, it did not violate the Act.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

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