



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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**24-ORD-023**

January 29, 2024

In re: David Bricarello/Franklin County Fiscal Court

**Summary:** The Office cannot find that the Franklin County Fiscal Court (“the Fiscal Court”) violated the Open Records Act (“the Act”) when it claims to have provided all responsive records it possesses.

### ***Open Records Decision***

David Bricarello (“Appellant”) submitted a request to the Fiscal Court for telephone records “for the last year” relating to the telephone an officer used on October 31, 2023, while “on call at” the Appellant’s property. In a timely response, the Fiscal Court granted the Appellant’s request and provided responsive records related to the officer’s use of his telephone. After receiving the records, the Appellant asked the Fiscal Court why the records did not contain any calls received on October 31, 2023. “After talking with staff,” the Fiscal Court determined that the officer was using a different telephone on October 31, 2023. The Fiscal Court then provided the Appellant with all responsive records related to the second telephone.<sup>1</sup> The Appellant then initiated this appeal, claiming the Fiscal Court must possess additional records responsive to his request. Specifically, the Appellant claims the records he received should document the officer having received an incoming call on October 31, 2023, but they do not.<sup>2</sup>

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<sup>1</sup> The Fiscal Court states the officer was “filling in for [an] Animal Control Officer” on October 31, 2023, and the responsive records reflect “a call lasting 17 minutes beginning at 8:28 PM on” that day. The Fiscal Court states it also confirmed with the officer that he was using the second telephone, presumably a telephone belonging to Animal Control, on October 31, 2023. Neither party has provided a copy of the records the Appellant received, but the Appellant claims the call on October 31, 2023, was an outgoing call. The Appellant initiated this appeal because he believes there should have been an incoming call to the telephone in question.

<sup>2</sup> The Appellant also mentions having made a request for similar records related to a separate incident on his property on October 10, 2023. However, the Appellant did not provide the Office with a copy of that request, and therefore, any dispute regarding that request is not properly before the Office. See KRS 61.880(2)(a) (requiring a person seeking the Office’s review of an agency’s response to

On appeal, the Fiscal Court again states it has provided all records responsive to the Appellant's request. Once a public agency states affirmatively that 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 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. Merely asserting that additional records exist does not establish a *prima facie* case that they do or that an agency has failed to conduct an adequate search. *See, e.g.*, 23-ORD-042 (an assertion that an employee must have sent or received emails during a specific time failed to establish a *prima facie* case that emails existed but were not provided).

Here, the Appellant claims the Fiscal Court should possess telephone records showing the officer received a call on October 31, 2023, because the officer was allegedly dispatched to the Appellant's property on that date in response to a complaint about his dogs barking. However, the fact the officer was present at the Appellant's property does not prove the officer personally received a telephone call from a complainant or any other person.<sup>3</sup> The Fiscal Court claims it provided the Appellant with all records related to the telephone the officer used on October 31, 2023. The Appellant's mere assertion that additional records should exist does not establish a *prima facie* case that the Fiscal Court did not provide all responsive records it possesses. As a result, the Office cannot find that the Fiscal Court violated the Act when it provided the Appellant with all records it claims are responsive to his request.

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a request to inspect records to provide a copy of both his original request and the agency's response to it).

<sup>3</sup> For example, it is possible the officer was dispatched to the Appellant's property by radio. Indeed, the Appellant provides additional correspondence from the Fiscal Court in which it suggested he submit his request to the “Frankfort E911” dispatch or other similar agencies that may possess records documenting the officer's dispatch to the Appellant's property. Although the Appellant claims to have already “reached out to the dispatch office” and was informed “the calls had to have been made directly to [the officer's] phone number,” he did not provide the Office with any documentation demonstrating that he sought records from any other public agency that may have dispatched the officer. At bottom, the Appellant believes additional records should exist and the Fiscal Court claims they do not. The Office cannot resolve factual disputes between requesters and public agencies about whether all responsive records have been provided. *See, e.g.*, 23-ORD-317; 22-ORD-010; 19-ORD-083; 94-ORD-121.

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).

**Russell Coleman**  
**Attorney General**

/s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

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