



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

24-ORD-042

February 20, 2024

In re: Jimmy Henderson/Logan County Sheriff's Office

Summary: The Logan County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act") when it did not respond to a request to inspect records. The Sheriff's Office did not violate the Act when it denied portions of three requests that sought information without describing public records to be inspected. The Sheriff's Office also did not violate the Act when it did not provide records that do not exist.

Open Records Decision

Jimmy Henderson ("Appellant") submitted three requests to the Sheriff's Office on October 27, 2023, November 10, 2023, and December 9, 2023, respectively. Each request inquired about county taxes.¹ In response to the first request, the Sheriff's Office stated it "does not maintain or curate any of the records requested in [the Appellant's] open records request" and directed the Appellant to the Kentucky Department of Revenue. In response to the second request, the Sheriff's Office again stated it "does not maintain or curate any of the records in [the Appellant's] open

¹ Specifically, the first request asked, "1. When did the Law [related to seven different county taxes] go into effect?"; "2. What year of each?"; "3. Who was the person(s) who voted each of these taxes into law?"; "4. Their oath of office to the Constitution?"; and "5. Where is it filed, book and page number[?]" The Appellant also asked "to see the law on each individual category listed on the tax bill along with the Oath of Office of each." In his second request, the Appellant asked "to see the Law on the taxes place[d] on [his] property tax Statement" and "1. When each was voted into Law?"; "2. Year?"; "3. Who was the person(s) who voted them in"; "4. Their Oath of Office?"; and "5. Where is it filed, book and page number[?]" The third request identified a county school tax and asked "1. [D]id the school tax originate from the sheriff's office?"; "2. Who authorized it and when?"; "3. Who voted it into law"; "4. Where is it filed, book and page number[?];"; "5. [W]hich branch [of government] authorized to separate the power from the branches of government to the magistrates?" The Appellant also stated, "If it's the sheriff's school tax I would think the sheriff's office would keep a copy of their documents." Finally, he asked for a copy of the Sheriff's oath of office.

records request.” The Sheriff’s Office did not respond to the Appellant’s third request. This appeal followed.

First, regarding the Appellant’s third request, the Sheriff’s Office explains that it prepared a response but failed to send it to the Appellant “due to an oversight.” Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” On appeal, the Sheriff’s Office admits it failed to respond to the Appellant’s third request within five business days. Accordingly, the Sheriff’s Office violated the Act.²

On appeal, the Sheriff’s Office states it “has provided all of the documents that [the Appellant] requested that are in [its] possession” and the Appellant’s remaining requests ask the Sheriff’s Office to “research and retrieve the records of various state and local legislative bodies that are reflected on the annual tax bill that the Sheriff is statutorily mandated to collect.” In short, the Sheriff’s Office claims that the remaining requests either seek information or records the Sheriff’s Office does not possess.

Most of the Appellant’s requests identify certain taxes and ask questions related to when those taxes were enacted, who enacted them, where those taxes are filed, and what authority supported the taxes. These requests do not describe public records to be inspected, but rather, seek information. *See, e.g.*, 23-ORD-257 (requester asked for “the full names” of correctional officers on duty at a specific time); 22-ORD-054 (requester asked “who ordered” a letter to be written, how much the author was paid, and “why” the letter “was circulated”). The Act does not require public agencies to answer interrogatories or fulfill requests for information. Rather, it only requires public agencies to produce *public records* for inspection. *See* KRS 61.872(2)(a) (requiring a request to inspect records to include, *inter alia*, a description of “the records to be inspected”); *Dep’t of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The [Act] does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”). Accordingly, the Sheriff’s Office did not violate the Act when it denied the Appellant’s requests because they did not describe any public records to be inspected.

² The Sheriff’s Office states it has since provided the Appellant with its prepared response and records responsive to his request for a copy of the Sheriff’s oath of office.

Some parts of the Appellant's requests, however, did describe records to be inspected. Specifically, in his first and second requests, he identified certain laws he wanted to see, and he requested the oaths of office of the persons who voted in favor of those laws. On appeal, the Sheriff's Office maintains that those records either do not exist or are not in its possession. 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 has not made a *prima facie* case that the Sheriff's Office possesses additional records.³ Therefore, the Sheriff's Office 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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

#033

Distributed to:
Jimmy Henderson
Stephen Stratton
Forrest Winchester

³ Rather, the county clerk is the public agency responsible for recording the oaths of office for county officials. *See* KRS 62.020(2)(d). Further, as the fiscal court is the agency responsible for enacting ordinances pertaining to county taxes, the fiscal court would be the agency in possession of the specific ordinances the Appellant seeks. *See, e.g.*, KRS 65.125.