



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-045

February 26, 2024

In re: Jason Parido/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 it provided all records responsive to the request.

Open Records Decision

On January 24, 2024, Jason Parido (“Appellant”) submitted a request to the Fiscal Court for the “complete minutes” of the Finance Committee meeting held on January 4, 2024.¹ The Appellant clarified that he did not want the “Summary Report” for that same meeting. On January 29, 2024, the Fiscal Court responded and stated that “the committee report document” it had provided to the Appellant in response to a previous request constituted the minutes of the meeting. The Fiscal Court further stated no additional documents exist that are responsive to the Appellant’s request. On January 31, 2024, the Appellant initiated this appeal, claiming the Fiscal Court is “not providing all the information available.”

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 Fort 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

¹ The Fiscal Court states that, on January 31, 2024, the Appellant submitted a separate request for records related to the same “Finance Meeting,” but this request will not be addressed in this appeal because the Appellant did not provide the Office with a copy of it or the Fiscal Court’s response to it. *See* KRS 61.880(2).

Appellant must produce some evidence that calls into doubt the adequacy of the agency's search. *See, e.g.*, 95-ORD-96. A requester's bare assertion that additional records exist does not establish a *prima facie* case that the Agency possesses additional responsive records. *See, e.g.*, 23-ORD-042.

Here, the Appellant requested the "complete minutes" of the January 4, 2024, Finance Committee meeting. Under KRS 61.835, public agencies must record minutes "setting forth an accurate record of votes and actions [taken] at" public meetings. Thus, the Appellant has established a *prima facie* case that meeting minutes should exist. However, KRS 61.835 does not require the minutes to be recorded in any particular format. The Fiscal Court provided a copy of the "Finance Committee Report" for the meeting in question, which the Fiscal Court claims is the Finance Committee's minutes for the meeting. On appeal, the Fiscal Court maintains its position that it does not possess any additional responsive records that have not already been provided to the Appellant. The Appellant does not provide any proof or cite any authority to support his assertion that the Finance Committee should have created a record in addition to its report. As a result, the Office cannot find that the Fiscal Court violated the Act when it timely provided the Appellant with all responsive records it possesses.

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:
Jason Parido
Michael Mueller
Max H. Comley