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25-ORD-099

April 8, 2025

In re: Tanyqua Oliver/Fayette County Public School System

Summary: The Fayette County School System (“FCPS”) did not violate the Open Records Act (“the Act”) when it issued a timely response, denied a request for records that do not exist, or when it denied a request to compile information.

Open Records Decision

On March 4, 2025, Tanyqua Oliver (“Appellant”) submitted a two-part request to FCPS seeking: (1) “all policies and procedures of the ‘Fayette County Public Schools Administrative Hearing Panel’ to include [b]ut not limited to ‘expulsion policies’ that override policy #9.435 of FCPS”; and (2) “the full list of member[s] and total number of members of the ‘Fayette County Public Schools Administrative Hearing Panel.’” On March 11, 2025, FCPS denied both parts of the Appellant’s request. It denied part one because it “is not in possession of the requested records,” and it denied part two because it “is not required to compile information or to create a record that does not already exist in response to an open records request.” This appeal followed.

First, the Appellant claims that FCPS’s response was “late.” 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.” Here, the Appellant sent a request to FCPS on March 4, 2025, and on March 11, 2025, five business days later, FCPS responded. Accordingly, the Office cannot find that FCPS issued a “late” response.

Next, FCPS denied part one of the request because it “is not in possession of the requested records” and maintains, on appeal, that it “does not have the specific

records requested.” Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make 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, to make a *prima facie* case that FCPS should possess the requested records, the Appellant provided a letter regarding her acceptance of an administrative hearing panel’s recommendations in lieu of the expulsion of a specific student. The Appellant asserts that this proves an “administrative hearing panel” exists. While the letter the Appellant provided may make a *prima facie* case that an “administrative hearing panel” exists, the letter does not make a *prima facie* case that any “policies and procedures” related to it also exist, or that FCPS is in possession of any such documents. Thus, the Appellant failed to make a *prima facie* case that FCPS possesses any records related to her request. Accordingly, FCPS did not violate the Act when it did not provide records requested that it does not possess.

Finally, the Appellant requested “the full list of member[s] and total number of members of the ‘Fayette County Public Schools Administrative Hearing Panel.’” FCPS denied that request because it “is not required to compile information or to create a record that does not already exist in response to an open records request.” To the extent the Appellant is asking FCPS to compile information or to create records that FCPS does not already possess, the Act does not require FCPS to do so.¹ The Act permits public inspection of public records as they exist. It does not require a public agency to compile information, respond to questions, or create a record to comply with a request. *See 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”).²

¹ The Appellant does not attempt to make a *prima facie* case that the “the full list of member[s] and total number of members of the ‘Fayette County Public Schools Administrative Hearing Panel’” records exist. A requester’s bare assertion that a public agency possesses the requested records is insufficient to establish a *prima facie* case that the public agency actually possesses such records. *See, e.g.*, 24-ORD-062; 22-ORD-247; 22-ORD-040.

² On appeal, FCPS again asserts it “does not have a specific record that includes the requested information,” specifically stating that “[t]here is no list or number count of individuals in regard to” the Appellant’s request.

In sum, FCPS did not violate the Act when it issued a timely response, denied a request for records that do not exist, or when it denied a request to compile information.

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
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Distributed to:

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