



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-121

May 14, 2025

In re: Melanie Barker/Cabinet for Health and Family Services

**Summary:** The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it denied a request for records that it does not possess.

### *Open Records Decision*

Melanie Barker (“Appellant”) submitted a request to the Cabinet for the “verification of employment documentation” that was collected by the Cabinet from March 23 to June 12, 2020. The Cabinet denied her request because it “does not possess a document responsive to [her] request.” This Appeal followed.

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).

A requester’s bare assertion that a public agency must possess the requested record is insufficient to establish a *prima facie* case that the agency in fact does possess that record. See, e.g., 22-ORD-040. To make a *prima facie* case that a public agency possesses or should possess the requested record, the requester must provide some statute, regulation, or factual support for that contention. See, e.g., 21-ORD-177; 11-ORD-074. Here, to make a *prima facie* case the records exist, the Appellant asserts the Cabinet required daycare centers turn over the requested records to it. The Appellant has not cited any statute, regulation, or any other factual evidence to support her contention. For its part, the Cabinet explains that, although it did collect

the requested records “in unique circumstances,” the “documents that were collected were returned to the providers.” Thus, the Appellant has not made a *prima facie* case that the Cabinet *currently* possesses the requested records. As a result, the Cabinet did not violate the Act when it denied a request for records that it does not possess.

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

#155

Distributed to:

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