



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-149

June 10, 2025

In re: Olivia Tipton/Oldham County School District

Summary: The Oldham County School District (“the District”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

Open Records Decision

On March 14, 2025, Olivia Tipton (“Appellant”) submitted a request to the District for “[t]he documents that were given to the School Board members for the school board meeting” on March 13, 2025. The Appellant specified that she was “requesting all documents that were prepared for that meeting that” contain “any information pertaining to the 504 procedures and their contents.” Finally, the Appellant also specified that “[t]he documents were described to contain information in red.” On March 18, 2025, the District granted the request and provided 35 pages of responsive records. On May 10, 2025, the Appellant initiated this appeal, claiming the District “did not include any content marked in ‘red’ as described by board members.”

On appeal, the District claims that it has provided the Appellant with all records responsive to her request. Moreover, it maintains that it does not possess responsive records containing “information in red.” 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 is able to make 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 the requested records exists, the Appellant has provided a recording in which a board member refers to an unspecified record as containing material in red. In response, the District explains that there was a “miscommunication” and that the board member was referring to a record it identified as “Policy (J09.313 AP.1 Draft)” not the “504 procedures” the Appellant identified in her request. Specifically, the District explains that “[p]olicy (J09.313 AP.1 Draft) contained red markings in the word version to show the changes that are to be deleted or replaced and is unrelated to the 504 procedures.” The District claims that “the 504 procedure manual has never had any ‘red’ markings, and this document has been” provided to the Appellant. Although the Appellant has made a *prima facie* case that the District possessed some records which contained “information in red,” she has not presented a *prima facie* case that those records are related to the “504 procedures” and, therefore, responsive to her request.¹ Therefore, the District did not violate the Act when it provided all records in its possession that were responsive to the request.

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

¹ Further, even if a requester makes a *prima facie* case that the request she seeks may or should exist, the Office cannot conclude that the records do, in fact, exist. Rather, the Office has long held it cannot resolve factual disputes about whether all records responsive to a request have been provided, or whether requested records should contain additional content. *See, e.g.*, 24-ORD-017; 23-ORD-027; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81

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Distributed to:

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