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25-ORD-167

July 7, 2025

In re: Nathan McCamish/Fayette County Clerk's Office

Summary: The Fayette County Clerk's Office ("the Clerk's Office") did not violate the Open Records Act ("the Act") when it did not provide a record in a form it does not possess.

Open Records Decision

Nathan McCamish ("Appellant") submitted a request to the Clerk's Office seeking "Database records as shown" on the Clerk's Office's website, which include the "marriage date, applicant names, and the unique 'instance number' of each marriage record." The Appellant further requested that the record be provided "in a common export format such as CSV or an SQL data dump." In response, the Clerk's Office stated that "marriage records" could be inspected or copied, but it advised that a "report of the information" the Appellant "requested does not currently exist, and would have to be developed by [its] software vendor." The Appellant then explained he is not seeking a report, but rather, seeks a copy of the database containing the requested information. The Clerk's Office then explained that it "does not possess the requested database" because it is "owned, maintained, and possessed by" its software vendor. This appeal followed.

On appeal, the Clerk's Office explains that it does not possess a database containing the requested information in the format requested by the Appellant. Further, the Clerk's Office explains that fulfilling the Appellant's request would require it to create a record by "send[ing] a service request to the vendor for extraction of data in a specific format." 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 record does exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). A requester must provide some evidence to support a *prima facie* case that a requested record exists, such as the existence of a statute or regulation

requiring the creation of the requested record, or other factual support for the existence of the record. *See, e.g.*, 21-ORD-177; 11-ORD-074,

To make a *prima facie* case, the Appellant provides copies of contracts between the Clerk's Office and its vendor, which state that rights to "all recording data" given to the vendor by the Clerk's Office "is that solely of the County and can be managed / distributed / displayed at the County's discretion." However, the question is not whether the Clerk's Office has a contractual right to instruct its vendor to create the database the Appellant seeks. The question is whether the Clerk's Office currently possesses a database "in a common export format such as CSV or an SQL data dump" that contains "marriage date[s], applicant names, and the unique 'instance number' of each marriage record." Thus, although the Appellant may have made a *prima facie* case that the Clerk's Office could order the creation of the requested database, he has not established that such a database currently exists and is in the possession of the Clerk's Office.¹ Because the Appellant has not made a *prima facie* case that such a database currently exists or is in the possession of the Clerk's Office, the Office cannot find that the Clerk's Office violated the Act by failing to provide it.

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

¹ The Clerk's Office acknowledges that it transmits marriage license information and land record information to its vendor through "a database housed on a server maintained at [its] office." However, given the explanation by the Clerk's Office that it does not possess a database containing the identified information *and* in the formats requested by the Appellant, it appears that that particular database was not responsive to the Appellant's request.

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Distributed to:

Nathan McCamish

Meredith Watson, Land Records Manager, Fayette County Clerk's Office

Susan Lamb, Fayette County Clerk