



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN  
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KY 40601  
(502) 696-5300

25-ORD-168

July 7, 2025

In re: Kurt Wallace/Office of the Attorney General

**Summary:** The Office of the Attorney General (“the Office”) did not violate the Open Records Act (“the Act”) when it timely responded to the Appellant’s request, when it redacted personal information under KRS 61.878(1)(a), or when it did not provide records it does not possess.

### *Open Records Decision*

On May 20, 2025, Kurt Wallace (“Appellant”) submitted a request to the Office seeking (1) “complete intake and delivery logs” for mail received by the Office on April 10 and 11, 2025 related to three tracking numbers; (2) “all physical and digital documents” that were “labeled, annotated, or associated with” the terms “Solv Cit,” “Solv Citz,” “Sov Cit,” or “Sov Citz”; and (3) “incident reports, loss declarations, or internal communications explaining the discrepancy” between mail the Appellant asserts the Office received and the records actually in the Office’s possession.<sup>1</sup> In response, on May 28, 2025, the Office stated it possessed 21 pages of responsive records with certain personal information redacted under KRS 61.878(1)(a).<sup>2</sup> The Office also identified three pages of IRS forms that were redacted under KRS 61.878(1)(a) because they contained similar personal information. The Office also cited KRS 131.190, incorporated into the Act by KRS 61.878(1)(l), and explained that the forms were made of “information acquired by the Department of Revenue,” thus making their contents exempt under KRS 131.190.

In response, the Appellant argued that the Office had not timely responded to his request, had not adequately explained its redactions, had not provided all

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<sup>1</sup> The third part of the Appellant’s request appears to be related to his previous requests, which were the subject of 25-ORD-120.

<sup>2</sup> Specifically, the Office redacted “telephone numbers, addresses, social security numbers, vehicle identification numbers, and similar personal information.”

responsive records, and had not explained why three pages of records were “blank.” The Office then stated it had provided all responsive records and cited its prior explanation of its redactions. This appeal followed.

The Appellant asserts four grounds for his belief that the Office violated the Act: (1) the Office did not timely respond to his request; (2) the Office did not adequately cite and explain the exemptions allowing its redactions; (3) the Office did not explain why three pages were “blank”; and (4) the Office did not address all parts of his request. We address each claim in turn.

Upon receiving a request to inspect records, a public agency must “determine within five (5) days, excepting Saturdays, Sundays, and *legal holidays*, 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.” KRS 61.880(1) (emphasis added). The Appellant’s request was submitted on May 20, and the Office responded on May 28, 2025. Relevant here, May 26, 2025, was the last Monday in May, and it was therefore Memorial Day, which is a legal holiday under KRS 2.110(1). *See also* KRS 18A.190(1)(d) (closing state offices and giving state employees a holiday on the last Monday in May). Accordingly, the fifth business day after the Office received the Appellant’s request was May 28, and the Office therefore timely responded to the request.

If an agency denies in whole or in part the inspection of any record, its response must include “a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). Here, the Office explained that it redacted from both categories of records “telephone numbers, addresses, social security numbers, vehicle identification numbers, and similar personal information” under KRS 61.878(1)(a). That statute exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Social Security numbers, home addresses, personal telephone numbers, dates of birth, and driver’s license numbers are the types of personal information pertaining to private individuals that may categorically be redacted from records when they provide no insight into how the public agency performed its public duties. *See Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (2013). Thus, the Office did not violate the Act when it redacted this information.<sup>3</sup>

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<sup>3</sup> Because the redacted information is exempt under KRS 61.878(1)(a), the Office need not address the Office’s alternative argument under KRS 131.190(1).

Finally, the Appellant contends that the Office did not address all portions of his request because he did not receive the “intake and delivery log” he requested. For its part, the Office maintains that it does not possess any additional records responsive to the Appellant’s request, and it informed the Appellant that the records it produced were the only responsive records in its possession. 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 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). To support a claim that the agency possesses responsive records it did not provide, the Appellant must produce some evidence that calls into doubt the adequacy of the agency’s search. *See, e.g.*, 23-ORD-259; 95-ORD-96.

Here, the Appellant has not established a *prima facie* case that additional records exist. Rather, he simply asserts that the Office “did not fully provide the records as requested.” The Office has previously found that a requester’s bare assertion that an agency possesses the requested record is not enough to make a *prima facie* case that the record exists. *See, e.g.*, 23-ORD-217; 23-ORD-181; 23-ORD-142; 22-ORD-040. And so here, the Appellant’s bare assertions do not make a *prima facie* case that the requested records do or should exist. Accordingly, the Office did not violate the Act when it denied a request for a record that it claims does not exist.<sup>4</sup>

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](mailto:OAGAppeals@ky.gov).

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<sup>4</sup> Finally, regarding the three “blank” pages identified by the Appellant, the Office denies providing any blank pages. Further, it provided the three pages to the Appellant again after the appeal was initiated. The Office has consistently found that it is unable to resolve factual disputes between the parties to an appeal under KRS 61.880(2)(a), such as whether all records responsive to a request have been provided, or whether requested records should contain additional content. *See, e.g.*, 25-ORD-114; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81.

**Russell Coleman**  
**Attorney General**

/s/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

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Distributed to:

Kurt Wallace  
Brystin Denguessi Kwin