



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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25-ORD-196

July 25, 2025

In re: Kurt Wallace/City of Hillview

Summary: The City of Hillview (“the City”) did not violate the Open Records Act (“the Act”) when it denied a request for records that it does not possess.

Open Records Decision

On June 24, 2025, Kurt Wallace (“Appellant”) submitted a request to the City for records related to two officers’ “tag inquiries” or “queries” during a two-day period. That same day, the City denied the request because the requested “records are not stored, monitored, or maintained” by it. On June 26, 2025, the Appellant initiated this appeal, alleging the City violated the Act “when it failed to cite the statutory exemption for its failure to provide records, it failed to provide the location of the records, and the records should be, or should be known to exist.”

On appeal, the City maintains that it does not possess the requested records. Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to make a *prima facie* case that the records do exist and that they are within the agency’s possession, custody, or control. *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 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 make a *prima facie* case that the agency possesses or should possess the requested records, the requester must provide some statute, regulation, or factual support for that contention. *See, e.g.*, 23-ORD-207; 21-ORD-177; 11-ORD-074. Here, the Appellant asserts that “the record is known to exist.” However, a requester’s bare

assertion that a public agency must possess the requested record is insufficient to make a *prima facie* case that the agency in fact does possess that record. *See, e.g.*, 22-ORD-040. Thus, the Appellant failed to make a *prima facie* case that the City possess any records responsive to his request.

Next, the Appellant claims the City violated the Act when it failed to notify him of the agency that possessed the records he requested. “If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.” KRS 61.872(4). The Office has found that KRS 61.872(4) applies if the correct custodian of records requested is known to the agency to whom the request is directed. *See, e.g.*, 16-ORD-034, 11-ORD-024, 06-ORD-040, 05-ORD-190.

Here, the Appellant asserts the City knew the correct records custodian of the records he requested because of “queries in the CAD typically used by police departments and cities in conducting license plate queries in traffic stops.” In contrast, on appeal, the City asserts that “at the time this appeal was filed, the City’s official custodian did not know whether the requested records even exist, and if they do, which agency might have them.” Thus, a factual dispute exists between the parties. The Office is unable to resolve factual disputes such as these in this forum. *See, e.g.*, 22-OMD-236; 19-OMD-187; 12-OMD-080. As a result, the Office cannot resolve the factual dispute between the parties as to whether the City knew the correct custodian of the requested record at the time of 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

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Distributed to:

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