



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-210

August 5, 2025

In re: Melanie Stevens/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it could not provide records that do not exist.

Open Records Decision

This appeal concerns three separate requests submitted to KSP by Melanie Stevens (“the Appellant”).¹ On June 27, 2025, the Appellant requested five recordings of 911 calls between KSP Post 13 Dispatch and a certain phone number on May 13 and 14, 2025. In a timely response, KSP stated it could not provide the recordings because it had “confirmed that no such record exists because the recording device for such calls was not working at [the] time of the requeste[d] incidents.” In a second request on June 27, 2025, the Appellant asked for a recording of a 911 call made to Post 13 Dispatch from a different phone number on May 13, 2025. Again, KSP timely responded that the record did not exist because the recording device was not functioning at that time. Finally, on July 2, 2025, the Appellant requested the Computer Aided Dispatch (“CAD”) report pertaining to the same incident on May 13 and 14, 2025, and, “[i]f possible,” the associated audio recordings. In a timely response, KSP provided the CAD report but reiterated that the recordings did not exist because the equipment had not been functioning. This appeal followed.

Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to present a *prima facie* case that the records do 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

¹ The Appellant attempted to appeal KSP’s disposition of an additional request submitted on June 30, 2025. However, the Appellant did not submit a complete copy of that request, but only a truncated version terminating in the instruction “Show more.” To invoke the jurisdiction of the Attorney General, a complaining party must provide “a copy of the written request and a copy of the written response denying inspection.” KRS 61.880(2). An appeal that does not fully comply with this requirement is unperfected and therefore beyond the Office’s jurisdiction. See 40 KAR 1:030 § 1.

that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested records, or other factual support for the existence of the records. *See, e.g.*, 21-ORD-177; 11-ORD-074. 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, the Appellant provides the CAD report showing that the 911 calls were made. However, she provides nothing to refute KSP’s assertion that the calls were not recorded due to equipment failure. Thus, although the Appellant has perhaps presented a *prima facie* case that the recordings *should* exist, KSP has rebutted any presumption that they *do* exist. As such, KSP has discharged its duty under the Act by explaining why no responsive records exist. *See Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011). Therefore, KSP did not violate the Act.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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/ James M. Herrick
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Assistant Attorney General

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Distributed to:

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