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25-ORD-217

August 13, 2025

In re: Stephen Napier/Kentucky State Police

**Summary:** The Office cannot find that the Kentucky State Police (“KSP”) violated the Open Records Act (“the Act”) when it could not provide records it does not possess.

***Open Records Decision***

Stephen Napier (“Appellant”) submitted a request to KSP for certain records that “pertain to” him, including “Surveillance Warrants and Applications,” “Warrant Extensions and Renewals,” “Surveillance Activities and Programs,” “Related Investigative Files,” and “Administrative” or “Policy Records.”<sup>1</sup> In a timely response, KSP granted the Appellant’s request and provided a citation redacted under KRS 61.878(1)(a).<sup>2</sup> KSP further stated that it “was unable to locate any additional records responsive to [his] request.”<sup>3</sup> This appeal followed.

Initially and on appeal, KSP states affirmatively that it does not possess any additional responsive records.<sup>4</sup> 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 make a *prima facie* case that a requested record exists, such as the existence of a statute or

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<sup>1</sup> The Appellant provided his date of birth and social security number to assist in locating records responsive to his request.

<sup>2</sup> The Appellant states that KSP’s redactions to the record are not at issue in this appeal.

<sup>3</sup> KSP also identified the police departments that are most likely to possess records responsive to the Appellant’s request.

<sup>4</sup> On appeal, KSP states that it conducted another diligent search for any existing records responsive to the Appellant’s request and that it confirmed no additional records exist.

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.

Here, in an attempt to make a *prima facie* case, the Appellant points to the citation KSP provided and asserts that its existence “logically implies the existence of underlying investigative files.” The Appellant also asserts that KSP violated “the Act by failing to conduct an adequate search for responsive records and improperly claiming that no additional records exist, despite evidence suggesting otherwise.” However, the existence of the citation does not necessarily mean that KSP possesses additional records that are both related to the Appellant and the various categories he described. Moreover, A requester’s bare assertion that a search was inadequate or that additional records exist is insufficient to make a *prima facie* case that the record actually exists. *See, e.g.*, 22-ORD-040. Here, the Appellant has not made a *prima facie* case that KSP possesses records beyond the citation it provided. Because the Appellant has not made a *prima facie* case that additional responsive records exist, the Office cannot find that KSP violated the Act by failing to provide them or that its search was inadequate.

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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