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25-ORD-233

August 27, 2025

In re: Kenneth Tracy/Franklin County

Summary: Franklin County ("the County") violated the Open Records Act ("the Act") when it failed, without explanation, to provide certain requested public records. The County did not violate the Act when it did not provide records that do not exist.

Open Records Decision

Kenneth Tracy ("the Appellant") submitted a request to the County for a "copy of all complaints filed with Franklin County Code Enforcement, Franklin County Planning & Zoning, JW Blackburn and any member of the Franklin County Fiscal Court with respect to Hickman Hill Road [from] March 17, 2025 to present; and copies of all emails between any employee with Planning & Zoning and [a named individual] with respect to Hickman Hill Road." The County responded by providing an online storage link "to access the responsive documents," which consisted of numerous emails, photographs, and videos, along with a handwritten phone message. This appeal followed.

The Appellant claims some responsive records were withheld. In response to the appeal, the County states, "There is no additional documentation known to [the] County at this time that would be responsive to [the] request." Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to make a *prima facie* case that additional 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 make a *prima facie* case that requested records exist, 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 records. *See, e.g.*, 21-ORD-177; 11-ORD-074. A requester's bare assertion that certain records should exist is insufficient to make a *prima facie* case that the records actually do exist. *See, e.g.*, 22-ORD-040.

Here, the Appellant makes four arguments in support of his claim that additional responsive records exist. First, he claims a complaint was made to a County code enforcement officer on July 16, 2025, which the County did not provide to him. As evidence, the Appellant provides a text message he received from the officer, which states, "Someone said the [road] was covered in mud. When I was told that I said we'll [*sic*] I know that there has been a sweeper out there everytime I drove through and I seen it sitting there when I went through." However, this text message does not indicate the officer received any "complaint" other than an oral statement. The Appellant requested copies of "complaints filed" about Hickman Hill Road, but an oral statement is not a complaint that is "filed." Moreover, the County explains it "does not keep a log or record of complaints that are made against parcels of property or individuals" and "does not have an official complaint form" for that purpose; therefore, "there are only records of complaints that [are] made via email or text message." Thus, the Appellant's text message does not establish a *prima facie* case that a written complaint was withheld.

Second, the Appellant states he "requested any complaints received by JW Blackburn (Magistrate-Franklin County Fiscal Court) whereby [*sic*] there were no complaints, by email or otherwise, submitted in the response, but provided in the response were emails where Mr. Blackburn was included as a receiver." It is not clear what the Appellant seeks to prove by this assertion. The fact that the County provided some complaints received by Mr. Blackburn, among other recipients, is not evidence that other complaints exist that were received by Mr. Blackburn alone. Therefore, the Appellant's statement does not make a *prima facie* case that additional responsive records exist.

Third, the Appellant points out an internal email dated April 3, 2025, which forwards a voice message. According to the email, the call was related to the "Hickman" address and the caller is "claiming it's a construction site." The voice message was forwarded again by an employee who asked, "Can you call this complainant, if you haven't talked to her already? She is calling on the hickman hill [*sic*]. I'm guessing the mud from the single trailer is coming across to her, since the stormwater on the hill is going the other direction." From the detail contained in these emails, which describes a "complainant" referring to "a construction site," it appears the attached voice message contained, to some extent, the substance of the complaint. Because the caller was designated as a complainant and the voice recording was not included in the records, the Appellant has made a *prima facie* case that the County failed to provide a complaint that exists in recorded form. A public agency denying inspection of a public record must provide "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). Because the County has not rebutted the presumption that an additional responsive record exists, the Office finds the

County violated the Act when it failed, without explanation, to provide the voice message.

Finally, the Appellant claims an email dated July 15, 2025, "shows at the bottom" another internal email between certain individuals "that was not included in the response." Upon examination of the produced records, there appears to be no email dated July 15, 2025, that fits this description. However, there is an internal email dated May 8, 2025, which contains at the bottom the header from another email dated May 5, 2025, involving the individuals identified by the Appellant. The subject line of that email is "FW: Erosion and dead cattle at Hickman Hill Road 3 of 3." The Appellant's request was for two types of documents: "complaints filed" regarding Hickman Hill Road, and emails about Hickman Hill Road "between" Planning & Zoning and a specific individual. It appears that the May 5 email was *forwarded to that specific individual* as part of the May 8 email. Therefore, the Appellant has made a *prima facie* case that the omitted May 5 email was responsive to the request. Because the County has not rebutted the presumption that the May 5 email was responsive, and did not explain its omission from the records produced, the County violated the Act.

In sum, the County violated the Act when it omitted a voice message that was responsive to the first part of the Appellant's request and an email dated May 5, 2025, that was responsive to the second part of his request. However, the County did not otherwise 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
James M. Herrick
Assistant Attorney General

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Distributed to:

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