



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-247

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In re: Delta Airlines, Inc./Kentucky Department of Revenue

Summary: The Kentucky Department of Revenue (“the Department”) did not violate the Open Records Act (“the Act”) when it produced all records responsive to the Appellant’s request.

Open Records Decision

On June 18, 2025, Dena Miller, on behalf of Delta Airlines, Inc. (“the Appellant”), submitted a request to the Department seeking “standardized assessment worksheets . . . created, maintained, or used for assessing the operating property of commercial air carriers” and specified that this request sought the worksheets “prior to input of taxpayer-specific information.” The Appellant also requested “all finalized worksheets created, maintained, or used for assessing the operating property of” the Appellant. In response, the Department provided what it considered to be all responsive records in its possession. This appeal follows.

On appeal, the Appellant claims the Department did not provide all responsive records. Specifically, the Appellant claims it should have been provided with three additional documents titled “Calculations,” “2020 Delta Airlines Inc Assessment,” and “2022 Delta Airlines Inc Assessment.” In response, the Department maintains that it possesses no additional records that are responsive to the Appellant’s 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 do, in fact, exist. See, e.g., 22-ORD-040. If the requester makes 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 make a *prima facie* case that each identified record does exist, the Appellant provides the spreadsheets it received from the Department that contain references to the identified records. According to the Appellant, the documents provided by the Department demonstrate that it “created and maintained additional spreadsheets that were used to calculate [the Appellant’s] assessment.” In response, the Department does not deny that the records identified by the Appellant exist. Rather, it explains that those records are not responsive to the Appellant’s request.

To start, regarding the “Calculations” record, the Department explains that it is not a part of the “standardized assessment worksheets” that the Appellant requested. Instead, according to the Department, the “Calculations” records “represents an internal process whereby correlation factors stored in the database are pulled over for a particular industry *once specific taxpayer data is input into a worksheet template*” (emphasis in original). As such, the Department has adequately explained why this record was not produced in responsive to a request for “standardized assessment worksheets” “prior to input of taxpayer-specific information.”

Next, regarding the “2020 Delta Airlines Inc Assessment” and “2022 Delta Airlines Inc Assessment,” the Department explains that those records are not the “finalized worksheets” the Appellant requested. Instead, according to the Department, those records are “preliminary workpapers subject to change as more information is obtained,”¹ and “they do not represent the assessed value of [the Appellant’s] operating property as finally determined and ultimately certified by the Department.” Finally, the Department, by affidavit, states that these records “are not finalized workpapers used for assessing [the Appellant’s] operating property, and therefore, are not responsive to” the request.

Responding to the Department, the Appellant argues that the Department has inaccurately changed the terms of its request. However, a reasonable interpretation of its request for “finalized worksheets created, maintained, or used for assessing the operating property of” the Appellant is to provide only the final worksheets that assess the operating property of the Appellant.² As such, the Department has

¹ The Department further argues that, if these records were considered responsive to the Appellant’s request, they would be exempt from disclosure under KRS 61.878(1)(i) and (j). The Department’s potential invocation of those exemptions is not at issue in this appeal.

² The Department explained there is only one “finalized worksheet” used to assess the Appellant’s operating property each year and that record was produced for each identified year.

adequately explained why those records³ were not produced in response to the Appellant's request for "finalized worksheets."⁴

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

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Distributed to:

Brad S. Daniels

Leigh Powers, Kentucky Department of Revenue

Sherry D. Dungan, Security and Disclosure Officer, Kentucky Department of Revenue

Bethany Atkins Rice, Executive Director, Office of General Counsel, Kentucky Department of Revenue

³ To the extent that the Appellant and the Department disagree regarding whether the "2020 Delta Airlines Inc Assessment" and "2022 Delta Airlines Inc Assessment" each constitute a "finalized worksheet" that assesses the operating property of the Appellant, that question presents a factual dispute the Office cannot resolve. *See, e.g.*, 24-ORD-097 (declining to resolve a factual dispute regarding "whether the records previously provided to the Appellant are the records that she requested"); 22-ORD-010 (same); 21-ORD-253 (same).

⁴ The Appellant alleges the Department has failed to adhere to the Kentucky Taxpayers' Bill of Rights, KRS 131.041 to 131.081. Under the Act, the Office has the authority only to issue "a written decision stating whether the agency violation the provisions of" *the Act*. KRS 61.880(2)(a). Thus, the Office has no authority to decide whether the Department violated the Taxpayers' Bill of Rights.