



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-269

September 19, 2025

In re: AJ Spaulding/Jefferson County Public Schools

Summary: Jefferson County Public Schools (“JCPS”) did not violate the Open Records Act (“the Act”) when it did not provide a record it does not possess.

Open Records Decision

On August 11, 2025, AJ Spaulding (“Appellant”) submitted a request to JCPS for “[a]ll draft reports, internal review notes, revisions, edits, or reviewer comments made prior to the finalization of evaluation reports for [his] daughter” between June 1 and August 9, 2025, “including psychoeducational, academic, and speech/language evaluations.” On August 18, 2025, JCPS granted the Appellant’s request and provided 22 records. The same day, the Appellant stated his belief that the records produced did “not fully cover [his] initial request” and asked JCPS to “confirm whether additional records exist that may fall under the scope of [his] request.” On August 22, 2025, JCPS stated that it “do[es] not possess any additional records responsive to [the Appellant’s] request.” This appeal followed.

The Appellant asserts that he should have received a “draft evaluation report” that included comments made by a specific JCPS employee. JCPS maintains such records do not exist. Once a public agency states affirmatively that records do not exist, the burden shifts to the requester to make a *prima facie* case that the requested records do exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). A requester’s bare assertion that an agency possesses requested records is insufficient to make a *prima facie* case that the agency, in fact, possesses them. *See, e.g.*, 22-ORD-040. Rather, 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 this contention. *See, e.g.*, 21-ORD-177; 11-ORD-074.

Here, as evidence, the Appellant provides an email from a JCPS employee discussing a particular report that stated, “I have reviewed the draft evaluation report and shared a few suggestions with [another employee] to enhance clarity and refine the content.” However, JCPS explains that it no longer possesses the “draft evaluation report” because, once the suggested edits were made, “the previous version of the document was overwritten and ceased to exist.” Thus, to the extent that the Appellant may have made a *prima facie* case that the “draft evaluation report” once existed, JCPS has rebutted that presumption by explaining that the draft was deleted. Accordingly, JCPS did not violate the Act when it did not provide a record it does not possess.¹

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:

AJ Spaulding
Brian Yearwood
Corrie Shull
C. Tyson Gorman

¹ The Office notes that, even if the “draft evaluation report” did still exist, it would likely be exempt as a “preliminary draft” under KRS 61.878(1)(i).