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25-ORD-275

September 26, 2025

In re: Breydon Helm/Russell County Sheriff's Office

Summary: The Russell County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act") when it failed to respond to a request within five business days. The Sheriff's Office did not violate the Act when it did not provide records it does not possess.

Open Records Decision

On August 12, 2025, Breydon Helm ("Appellant") submitted a request to the Sheriff's Office for records related to "Requests for Proposals." On September 5, 2025, having received no response from the Sheriff's Office, the Appellant initiated this appeal.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency "shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision." Here, the Appellant submitted his request to the Sheriff's Office on August 12, 2025, but had yet to receive a response by September 5. On appeal, the Sheriff's Office states that it "inadvertently overlooked the original requests by [the Appellant]."¹ As a result, the Sheriff's Office violated the Act when it failed to respond to the Appellant's request within five business days.

On appeal, the Sheriff's Office denies the Appellant's request because "[n]o such records are in possession of the" Sheriff's Office. Once a public agency states

¹ The Appellant disputes the Sheriff's Office's claim that it "inadvertently overlooked the original requests," and he provided a response to a previous record from the Sheriff's Office dated March 18, 2025, as proof. The Office need not determine the accuracy of that statement to determine whether the Sheriff's Office complied with KRS 61.880(1).

affirmatively that it does not possess responsive records, the burden shifts to the requester to make 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 make a *prima facie* case 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 can 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).

To make a *prima facie* case, the Appellant provides a purported screenshot of the Sheriff’s Office’s website that he took on August 15, 2024, which mentions “RFP – Request for Proposal.” However, assuming the accuracy of the Appellant’s photo, the existence of a year-old link on the Sheriff’s Office’s website stating “RFP – Request for Proposal” does not establish a *prima facie* case that the Sheriff’s Office *currently* possesses any requests for proposals and related documents. Accordingly, the Sheriff’s Office did not violate the Act when it did not provide records it does not possess.

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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