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OFFICE OF THE ATTORNEY GENERAL

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25-ORD-282

September 26, 2025

In re: Jason Riley/Hardin County Attorney's Office & Hardin County Sheriff's Office

Summary: The Hardin County Attorney's Office ("the County Attorney") did not violate the Open Records Act ("the Act") when it did not provide records it does not possess. The Hardin County Sheriff's Office ("the Sheriff's Office") violated the Act when it denied access to a public record it owned without citing an exemption authorizing such a denial.

Open Records Decision

Jason Riley ("Appellant") submitted separate requests to the County Attorney and the Sheriff's Office (collectively "the Agencies") seeking a copy of a settlement agreement "between the Hardin County Sheriff's Department and the family" of a named individual.[1] In timely responses, the Agencies both stated they do not possess a copy of the settlement agreement. The Appellant appealed both Agencies' responses.[2]

Both the County Attorney and the Sheriff's Office maintain that they do not possess the settlement agreement. Once a public agency states affirmatively that it does not possess a record, the burden shifts to the requester to make a *prima facie*

[1] The Appellant states that he submitted another request for the same record to the County Attorney on August 7, 2025, and that he submitted the same request to the Hardin County Judge/Executive and "EMS" agency. He received denials in response to these requests stating the respective agencies did not possess the settlement agreement. Under KRS 61.880(2)(a), a person seeking the Attorney General's review of a denial of a request to inspect records must provide a copy of both his original request and the agency's response. The Appellant did not provide a copy of an August 7 request to the County Attorney or copies of the responses issued by the Hardin County Judge/Executive or "EMS" agency denying his request. Accordingly, the Office lacks jurisdiction to consider those requests on appeal.

[2] Because the only difference between the requests was the agency to which each request was directed, and because the County Attorney responded on behalf of both Agencies, the Office has consolidated both appeals and decides them in this single decision. *See, e.g.*, 22-ORD-167.

case that the agency does possess the record. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the agency does possess the record, "then the 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 support a claim that the agency possesses responsive records that it did not provide, the Appellant must produce some evidence that calls into doubt the adequacy of the agency's search. *See, e.g.*, 95-ORD-96.

To make a *prima facie* case that the Agencies possess the record, the Appellant directs the Office to a news article stating that an official with the Sheriff's Office confirmed the case was settled with funds paid by an insurance carrier.[3] The Appellant argues that the settlement agreement in possession of the insurance carrier (or the attorney hired by the insurance carrier) is a record owned by the Agencies and, therefore, is a public record subject to inspection.

"Public records" are records which are prepared, *owned*, used, in the possession of *or* retained by a public agency. KRS 61.870(2). Because the definition uses the disjunctive "or," records are "public records" if they are "owned . . . by a public agency," even if they are "in the possession of" someone outside the agency. *See, e.g.*, 23-ORD-344. This includes records in the possession of a private attorney relating to his representation of a public agency, because the file is "owned" by his client, the public agency. *See, e.g.*, 20-ORD-115; 06-ORD-032.[4] Accordingly, records in the private attorney's file are "public records" under the Act.

Thus, the ultimate question regarding whether the Agencies' respective assertions that they do not possess the settlement agreement depends on whether either of them was the client who owns the record. As to the Sheriff's Office, it is apparent that it was the attorney's client and therefore could demand a copy of the settlement agreement from its attorney. The Sheriff's Office does not dispute that one of its officials spoke authoritatively regarding the source of the settlement funds. Moreover, the claims in the underlying litigation were made against two Sheriff's Office deputies. Thus, the Office concludes that the settlement agreement is a public record "owned" by the Sheriff's Office and subject to the Act.

Whether the settlement agreement was subject to inspection, however, is a different question. *See* KRS 61.878(1). Here, the Sheriff's Office did not assert that any exemption permits it to withhold the record and deny inspection. Therefore, the

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[3] The Agencies do not dispute the accuracy of this statement.

[4] This is true even when, as here, the private attorney is retained by an insurance company to defend the agency in litigation. *See* 20-ORD-115 n.1; 00-ORD-207; *see also* KBA Ethics Op. E-340 (July 1990) ("The [Kentucky] Rules [of Professional Conduct] take the view that the insured is the lawyer's client.").

Sheriff's Office violated the Act in denying the request and failing to provide "a brief explanation of how the exception applies to the record[s] withheld." KRS 61.880(1).

On the other hand, it is not at all apparent that the County Attorney was a client of the attorney defending the civil action, as neither the County Attorney nor any of its employees were settling parties to the action. Thus, it cannot be said that the County Attorney "owned" the record and thus could order the attorney to produce it. As such, the County Attorney accurately stated that it does not possesses the settlement agreement and cannot produce it in response to the Appellant's request. Accordingly, the County Attorney did not violate the Act when it did not produce a record 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/ Zachary M. Zimmerer
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Assistant Attorney General

#458 & 459

Distributed to:

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