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25-ORD-289

September 30, 2025

In re: Rance Garrison/Kentucky State Board of Elections

Summary: The Kentucky State Board of Elections (“the Board”) did not violate the Open Records Act (“the Act”) when it did not produce records it does not possess.

Open Records Decision

Rance Garrison (“the Appellant”) sought from the Board records “relating to the removal of [his] voter registration on or about April 16, 2007, which carried the notation ‘incompetent.’” In response, the Board stated that it does not possess any records related to the Appellant for the year 2007 in its database. The Board further explains that its retention schedule requires that a “Notice of Incompetency” be retained for four years. This appeal followed.

Once a public agency states 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).

Here, to make a *prima facie* case the Board currently possesses the request record, the Appellant provides a record provided to him by the Laurel County Clerk’s Office. That record is a “Daily Online Activity Report” for April 16, 2007, which indicates the Appellant is incompetent. The Appellant also provided an email from the Laurel County Clerk’s Office stating that the “information in [the Daily Online Activity Report] was provided to” it by the Board. For its part, the Board correctly points out the Daily Online Activity Report provided by the Appellant was created by

the Laurel County Clerk's Office on August 15, 2025.¹ Further, the Board states that its retention schedule only required it to retain a "Notice of Incompetency" for four years.²

As such, even if the Appellant has made a *prima facie* case that the Board once possessed responsive records and had previously provided such records to the Laurel County Clerk's Office, he has not made a *prima facie* case that the Board *currently* possesses the requested record. And even if the Appellant had made a *prima facie* case, the Board has rebutted that presumption by explaining that the records have been destroyed per its record retention schedule. Accordingly, the Board 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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Rance Garrison
Karen Sellers, Executive Director, Kentucky State Board of Elections
Taylor Brown, General Counsel, Kentucky State Board of Elections

¹ The Daily Online Activity Report has a notation stating it was printed on August 15, 2025.

² See Records Retention Schedule, State Board of Elections, available at <https://kdla.ky.gov/records/RetentionSchedules/Documents/State%20Records%20Schedules/kyelections.PDF> (last accessed September 30, 2025).