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25-ORD-299

October 3, 2025

In re: John Daniels/Boyd County Sheriff's Office

Summary: The Boyd County Sheriff's Office ("the Sheriff's Office") did not violate the Open Records Act ("the Act") when it could not provide records that are not within its possession, custody, or control.

Open Records Decision

John Daniels ("the Appellant") submitted a six-part request to the Sheriff's Office, three parts of which are at issue in this appeal. In parts 3 and 4, the Appellant requested "[a]ll disciplinary records, complaints[,] and internal affairs investigation files concerning" two named officers. The Sheriff's Office responded that "[t]here are no documents responsive to [the] request, as the information is not privy to the current administration." In part 5, the Appellant requested a "Rush Off Road detail activity sheet for 04/24/2025" for one of the two officers. The Sheriff's Office responded that "[t]here are no documents responsive to [the] request." This appeal followed.

On appeal, the Sheriff's Office reiterates that it did not possess any records responsive to parts 3 and 4 as of the time of the request and asserts that "[t]here is no such document as requested" in part 5. Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to make a *prima facie* case that the records exist in the agency's possession, custody, or control. *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 records do or should exist, "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). A requester must provide some evidence to make a *prima facie* case that requested records exist, such as a statute or regulation requiring the creation of the requested record or other factual support for the existence of the record. *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 actually do exist in the possession, custody, or control of the agency. *See, e.g.*, 22-ORD-040.

Here, regarding parts 3 and 4 of the request, the Appellant claims he submitted a complaint to a circuit judge against the two officers named in the request and “assert[s], based on personal knowledge and corroborating witnesses, that [the Sheriff’s Office] is in possession of records related to that complaint and any associated inquiry or review thereof.” However, as the Appellant has provided no evidence from the alleged “corroborating witnesses,” his allegations only amount to a bare assertion that the Sheriff’s Office possesses those records. Regarding part 5 of the request, the Appellant claims he is “aware that [an] administrative staff member . . . received” the requested record “and physically presented it to” the Boyd County Sheriff. This, likewise, constitutes only a bare assertion that the Sheriff’s Office possesses such a record. Thus, the Appellant has not made a *prima facie* case that the requested records are within the possession, custody, or control of the Sheriff’s Office. Accordingly, the Sheriff’s Office did not violate the Act.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

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