



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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25-ORD-323

October 16, 2025

In re: Brandon Bryan/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”), when could not grant a request for records that do not exist.

Open Records Decision

Brandon Bryan (“Appellant”) submitted a request to KSP for two types of records: (1) “[a] list of all formal complaints filed regarding [KSP’s] Post 4 within the last 12 months” and (2) “[a] list of all lawsuits filed against or involving [KSP’s] Post 4 within the last 12 months.” KSP denied both parts of the request because its “diligent search did not locate any responsive records.” This appeal followed.

On appeal, KSP explains that “it does not possess or maintain any records that list all formal complaints or lawsuits.” 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 do exist and that they are within 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). 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 that contention. *See, e.g.*, 23-ORD-207; 21-ORD-177; 11-ORD-074.

Here, to make a *prima facie* case that the requested records do exist or that KSP should possess them, the Appellant asserts “[i]t is known that KSP Post 4 has several lawsuits pending and complaints filed.” The Appellant does not provide any

support for his assertion such as a statute, regulation, or any other factual support. Moreover, even if the Appellant's bare assertion were true, it does not establish that KSP possesses a record listing complaints and lawsuits. Thus, the Appellant has not made a *prima facie* case that KSP does or should possess the requested records. The Act does not require a public agency to create a record to satisfy a request. *See, e.g.*, 24-ORD-278; 24-ORD-229; 16-ORD-052. Accordingly, the Office cannot find that KSP violated the Act when it could 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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