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25-ORD-334

October 23, 2025

In re: Melanie Barker/Finance and Administration Cabinet

**Summary:** The Finance and Administration Cabinet (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it did not provide records it does not possess.

***Open Records Decision***

Melanie Barker (“Appellant”) submitted a request to the Cabinet seeking the request for proposal, “All Bids’ for childcare billing software companies,” and the “document that shows what” the amount of money the Cabinet for Health and Family Services paid a specific company in each calendar year since 2017. In response, the Cabinet stated that it “possesses no documents responsive to your request,” and there “is no Master Agreement” with the identified company because “they are not a registered vendor with the Commonwealth.” This appeal followed.

On appeal, the Cabinet maintains that it possesses no records responsive to the request. 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 request records do exist or that the Cabinet should possess them, the Appellant provided the response of the Cabinet for Health and Family Services to an identical request, which stated that it “believes [the Cabinet] may have responsive records.” A response from a separate agency stating its belief that the Cabinet “may” possess the request records is not *prima facie* evidence that the Cabinet does, in fact, possess those records. Thus, the Appellant has not made a *prima facie* case that the Cabinet possess the requested records and did not violate 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/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

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Distributed to:

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