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25-ORD-347

November 6, 2025

In re: Matthew Mouser/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”), when it denied a request for records that it does not possess.

Open Records Decision

Inmate Matthew Mouser (“Appellant”) submitted a request to KSP for “records in [KSP’s] possession relating to the execution of a search warrant at” his residence on September 8, 2021. KSP denied his request because it “was unable to locate any responsive records with the information provided.” This appeal followed.

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 KSP possesses the records he requested the Appellant provides a Federal Bureau of Investigation crime scene sign-in log that identifies the Appellant’s residence as the crime scene and includes the signatures of three KSP troopers. At best, the Appellant has made a *prima facie* case that KSP troopers were present at his residence on September 8, 2021. The Appellant has not

made a *prima facie* case that KSP possesses any responsive records related “to the execution of a search warrant.” Accordingly, KSP did not violate the Act when it denied a request for records that it does not possess.¹

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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¹ On appeal, KSP again confirms that it does not possess any records responsive to the Appellant’s request and indicates the FBI may possess them.