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25-ORD-359

November 14, 2025

In re: Charles Zoeller/City of Hillview

Summary: The Office cannot find that the City of Hillview ("the City") violated the Open Records Act ("the Act"), when it made records available for inspection, when it denied a request for records that it claims it does not possess, or when it did not cite a "specific exception authorizing the withholding" of those records. The Office cannot resolve the factual disputes between the parties as to conflicting factual narratives.

Open Records Decision

Charles Zoeller ("Appellant") submitted a request to the City for 14 categories of records "concerning events occurring between 8:00 a.m. and 11:59 a.m. on November 20, 2024."[1] The City granted the Appellant's request as to five parts and

[1] The 14 parts of the request are: (1) "Dash-camera video from the vehicle operated by [a named officer] for that time period"; (2) Dash-camera video from the vehicle operated by" another named officer; (3) "All records generated by [the first named officer] relating to that time period, including after-action reports, notes, logs, correspondence, police reports, and incident reports" (4) "All records generated by [the second named officer] relating to that time period, including after-action reports, notes, logs, correspondence, police reports, and incident reports"; (5) "All Internal Affairs investigation records concerning those events and the resulting arrest, including notes, findings of fact, timelines, and communications with" the Mayor, Chief of Police, and the Bullitt County Sheriff's Office; (6) "Records of vehicles allegedly stolen by an individual identified as 'Tony' between November 1 and November 30, 2024, listed by make, model, and color"; (7) "Records showing the basis for the conclusion that 'Tony' was stealing cars, apart from any reference to the fictional Fat Tony character from The Simpsons"; (8) "Instructions or communications from" the Chief of Police "directing officers to track, search for, or arrest 'Tony'"; (9) "Records of [a named officer's] qualification as a supervisor, including certification or appointment documents"; (10) "Training records for [two named officers] concerning *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), including academy, continuing education, or in-service training"; (11) "Records of union affiliation for [two named officers] with the Fraternal Order of Police (FOP)"; (12) "Records of either officer's affiliation with any other police labor union or similar organization"; (13) "Record of blanket affiliation of the City of Hillview Police Department, Bullitt County, with any police labor union or organization similar to the FOP"; and (14) "Record of FLOCK

notified him that the records were available for pickup upon payment of a $5.00 cost for a DVD.[2]

The City also denied the remaining nine parts of the Appellant's request, explaining that it does not possess records responsive to those parts and providing various reasons as to why.[3] This appeal followed.

On appeal, the Appellant's chief claim is that the City failed to provide all records responsive to each part of his request. Specifically, he disagrees with the City's position that (1) no internal affairs investigation occurred and therefore no associated records exist and (2) no additional camera footage exits. For its part, the City maintains that there "was no internal affairs investigation opened" and the "requested camera footage also does not exist." 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, in an attempt to make a *prima facie* case that the City possesses or should possess responsive records related to an internal affairs investigation, the Appellant provided a signed "Factual Statement" by a witness who claims to have witnessed a conversation in which the mayor stated an internal affairs investigation was ongoing. However, a third-party's bare hearsay does not make a *prima facie* case that the alleged investigation occurred or that the records actually do exist. *See, e.g.*, 22-ORD-040. Moreover, the Office cannot resolve the factual dispute between the

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camera images, video records, or mobile camera recordings not yet provided for the same incident period."

[2] The City granted parts (1), (2), (3), (4), and (12) of his request.

[3] The City denied these parts and gave the following explanations: (5) "There was no [internal affairs] investigation"; (6) "There [is] no report of a stolen vehicle"; (7) "Don't know a Tony—the officer's involved do not recollect"; (8) "None"; (9) the identified officer "is not a supervisor"; (10) "Records held the Department of Criminal Justice Training ('DOCJT')"; (11) "Records held by DOCJT"; (13) "Please contact Hillview FOP. [The City] ha[s] no records"; and (14) "The City of Hillview has no FLOCK cameras."

parties regarding whether the alleged investigation did or did not take place. *See, e.g.,* 21-ORD-163. Thus, the Office cannot find that the City violated the Act when it did not provide investigation records it claims do not exist.

The Appellant also asserts that he should have received lobby video of his "Internal Affairs complaint" on November 20, 2024. The City maintains it does not possess footage from that date. To make a *prima facie* case regarding that footage, the Appellant states only that the City had a duty to maintain that footage. However, the City explains that the footage was deleted as part of its routine process to maintain storage space for new camera footage. As such, the Appellant has not presented a *prima facie* case that the City currently possesses the identified lobby footage, and therefore, has not shown that the City violated the Act when it did not provide it.

The Appellant also claims the City's response was "[i]nadequate" because it failed "to cite specific statutory exemptions for withholding the records." In contrast, the City claims it does not possess the records the Appellant requested. Under KRS 61.880(1), "[a]n agency response denying, in whole or in part, inspection *of any record* shall include a statement of the specific exception authorizing the withholding *of the record* and a brief explanation of how the exception applies *to the record withheld*" (emphasis added). Here, rather than withhold records, the City explained that the records do not exist. Thus, the City met its obligations under KRS 61.880(1), and its response did not violate the Act.

In sum, the Office cannot find that the City violated the Act when it made responsive records available for inspection, when it denied requests that seek nonexistent records, and when it did not cite a "specific exception authorizing the withholding" of records it claims it does not possess.[4]

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

[4] The Appellant also raises many allegations related to the City's statutory obligations under the "Police Officers Bill of Rights," KRS 15.520, and claims the City should have investigated the incident related to his request. However, those allegations do not involve the application of the Act, and therefore, an appeal under KRS 61.880(2) is not the proper forum for the Appellant to raise such concerns. *See, e.g.,* 23-ORD-218; 23-ORD-166 n.2; 23-ORD-048 n.1; 22-ORD-244 n.3.

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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