



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-369

November 21, 2025

In re: Ashley Ward/Cynthiana-Harrison County-Berry Joint Planning Commission

Summary: The Cynthiana-Harrison County-Berry Joint Planning Commission (“the Commission”) violated the Open Records Act (“the Act”) when it did not timely respond to a request for records. The Commission did not violate the Act when it could not provide records that do not exist.

Open Records Decision

On September 24, 2025, Ashley Ward (“the Appellant”) emailed a request to the Commission’s Inspector for “planning and zoning call logs from August 26, 2025 to September 1, 2025.” Having received no response by October 3, 2025, the Appellant contacted the Harrison County Judge/Executive.¹ Finally, on October 9, 2025, the Appellant contacted the Commission’s attorney for assistance. The Commission responded on October 13, 2025, stating it “does not maintain or process any record responsive to [the] request” because it “does not track or log incoming or outgoing calls.” This appeal followed.²

Under the Act, a public agency has five business days after receiving a request for public records in which to fulfill or deny the request. KRS 61.880(1). On appeal, the Commission states the Inspector, to whom the Appellant submitted her request, is not the Commission’s custodian of records. Under KRS 61.872(4), “[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name

¹ The record on appeal does not reflect whether the Appellant received any response from the County Judge/Executive, who is not a party to this appeal.

² The Appellant has provided a copy of a request dated October 13, 2025, for a copy of a certain ordinance. However, she has not provided a copy of the response to that request or indicated whether a response was received. Accordingly, the Office does not have jurisdiction to review the Commission’s disposition of that request. *See* 40 KAR 1:030 § 1 (“The Attorney General shall not consider a complaint that fails to conform [to] KRS 61.880(2), requiring the submission of a written request to the public agency and the public agency’s written denial, if the agency provided a denial.”).

and location of the official custodian of the agency's public records." Here, the Commission explains the Inspector was on vacation when the request was submitted and he did not take action on the request when he returned because the request "was lost in the ebb and flow of email that must be [dealt] with upon returning from vacation." Thus, the request went unanswered until after the Appellant contacted the Commission's attorney on October 9, 2025. The Commission admits it violated the Act by failing to issue a timely response to the request, but states its violation was not "willful."³

Further, the Commission reiterates that it "does not keep any call logs" for either incoming or outgoing calls. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make a *prima facie* case that the requested record does exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). A requester must provide some evidence to make a *prima facie* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record, or other factual support that the requested record exists. See, e.g., 21-ORD-177; 11-ORD-074. Here, the Appellant has not made a *prima facie* case that any call logs exist. Therefore, the Commission violated the Act when it failed to issue a timely response, but did not violate the Act when it could not provide records that do not exist.

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

³ Although a court may make a finding under KRS 61.882(5) as to whether "records were willfully withheld in violation of" the Act, the Attorney General does not have jurisdiction under KRS 61.880(2)(a) to impose penalties and therefore "does not determine whether violations are 'willful.'" 22-ORD-205.

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Distributed to:

Ms. Ashley Ward

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