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25-ORD-373

November 24, 2025

In re: Jerry Grooms/Fayette County Public Schools

**Summary:** The Fayette County Public Schools (“FCPS”) did not violate the Open Records Act (“the Act”) when it denied a request for a record that does not exist.

***Open Records Decision***

Jerry Grooms (“the Appellant”) sent an email to FCPS “[r]equesting Name/Title/Hire-Date for new hires from 2021-2025 and assigned to John D. Price building.” In a timely response, FCPS stated it was “not in possession of the requested record” and was “not required to compile information or to create a record that does not already exist.” This appeal followed.

The Act does not require public agencies to fulfill requests for information, but only for existing public records. *See* KRS 61.872(2)(a) (providing an agency “may require a written application . . . describing the records to be inspected”). Once a public agency states affirmatively that a requested record does not exist, the burden shifts to the requester to make a *prima facie* case that the requested record does exist. *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 record does 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 (citing *Bowling*, 172 S.W.3d at 341). A requester must provide some evidence to make a *prima facie* case that a requested record exists, such as the existence of a statute or regulation requiring the creation of the requested record or other factual support for the existence of the record. *See, e.g.*, 21-ORD-177; 11-ORD-074. A requester’s bare assertion that a record *should* exist is insufficient to make a *prima facie* case that the record *does* exist. *See, e.g.*, 22-ORD-040.

Here, the Appellant claims the “data/records” he requested “are ostensibly residing in a typical ERP database and should be easily retrieved without undue burden.” However, this assertion is not *prima facie* evidence that a record exists

containing the specific information the Appellant requested. In its response to this appeal, FCPS notes the Appellant's "request for information includes ten (10) different fields," such as "employees[] names, title of their jobs, hire-date, specific to newly hired employees," and "five (5) different years of information for one (1) specific location." FCPS states "it would take programmers, to cross reference multiple tables and conduct a manual review of the data to create a report with this information." The Act "does not require public agencies to carry out research or compile information to conform to a given request." OAG 89-45. Nor is a public agency "obligated to compile a list or create a record to satisfy an open records request." OAG 76-375. Further, a public agency has discretion whether "to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual." KRS 61.874(3). Regarding electronically stored information, if a public agency "does not maintain a pre-existing query, filter, or sort capable of extracting the records as requested," it may deny the request under KRS 61.874(3). *See, e.g.*, 21-ORD-178 (quoting 12-ORD-028). Here, FCPS states no such mechanism exists. Because FCPS does not maintain an existing record containing the specific information sought by the Appellant, and it is not obligated to create one, FCPS did not violate the Act when it denied the Appellant's request.

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

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Distributed to:

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