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25-ORD-382

December 1, 2025

In re: Matthew Johnson/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it timely responded to the Appellant’s request. The Cabinet also did not violate the Act when it claims it provided all records responsive to the Appellant’s requests.

Open Records Decision

On September 26, 2025, Matthew Johnson (“Appellant”) submitted a request to the Cabinet for records related to a minor child.¹ On October 23, 2025, the Cabinet provided all responsive records. This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant or deny the request. KRS 61.880(1). The Appellant’s request was submitted on September 26, 2025, meaning its response was due October 3, 2025. The Cabinet issued its response on October 3, 2025, but the Appellant complains that the response was issued after business hours. The Cabinet’s after-business-hours response did not violate the Act. Under KRS 61.880(1), the Cabinet was required to issue a response on October 3, 2025.² The Act does not require an agency to respond to a request before a certain time on the fifth business

¹ Specifically, the Appellant sought: (1) “The original complaint intake”; (2) “The referral and any other referral(s)”; (3) “All related documentation and correspondence within the Division of Prevention and Community Well-Being and Protection and Perman[en]cy”; and (4) “All emails, documentation, and correspondence referencing or involving” 12 Cabinet employees.

² The Office notes that *requests* submitted after business hours are considered received by an agency the following business day. *See, e.g.*, 21-ORD-113. This is because the receipt of the request cannot occur when the agency is not open. But here, even though the Cabinet’s response was issued after hours, there is no disagreement among the parties regarding the fact that it was issued on the fifth business day following the Cabinet’s receipt of the request.

day. Because the Cabinet responded on the due date, its response was timely and did not violate the Act regardless of the time it was issued.

On appeal, the Appellant also asserts that the Cabinet did not provide him with all records responsive to his request. In its original response, the Cabinet stated that it was providing responsive records without withholding. Once a public agency states affirmatively that it does not possess any additional records, the burden shifts to the requester to make a *prima facie* case that additional records do exist. *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 additional 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 carry his burden and make a *prima facie* case, the Appellant must produce some evidence that calls into doubt the adequacy of the agency's search. *See, e.g.*, 95-ORD-96. A requester's bare assertion that additional records exist does not make a *prima facie* case that the agency possesses additional responsive records. *See, e.g.*, 23-ORD-042.

Here, to make a *prima facie* case that additional responsive records exist, the Appellant refers to communications sent by five individuals confirming that additional records exist. However, the Appellant does no more than allege that these communications exist and that they confirm the existence of additional records. This bare assertion does not make a *prima facie* case that more responsive records exist. As such, the Office cannot find the Cabinet violated the Act when it provided what it stated were all the responsive records.

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
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