



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-405

December 16, 2025

In re: William Moore/City of Hodgenville

Summary: The City of Hodgenville (“the City”) did not violate the Open Records Act (“the Act”) when it did not provide records that it does not possess.

Open Records Decision

On October 20, 2025, William Moore (“Appellant”) submitted a request to the City seeking records related to a particular sewer main identified by street location. In relevant part, the Appellant sought maintenance and inspection records and logs created between January 1, 2009, and October 19, 2025, and a final report discussing “the cause and type of material that created the blockage” that was cleared on October 13, 2025. In response to both requests, the City advised that responsive records do not exist. This appeal followed.¹

On appeal, the City maintains that it does not possess records responsive to the Appellant’s request. 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

¹ The City provided records responsive to other portions of the Appellant’s request. Those portions of the request have not been challenged by the Appellant.

statute, regulation, or factual support for that contention. *See, e.g.*, 23-ORD-207; 21-ORD-177; 11-ORD-074.

To make a *prima facie* case that the City possesses the requested maintenance logs, the Appellant provided a copy of a City Facebook post from 2016 stating that a private company was “surveying and running cameras through sewer lines.” However, in response, the City explains that the work referenced in that Facebook post was not performed on the sewer line identified by the Appellant. Moreover, the City also explains that it “does not maintain maintenance logs, inspection reports, or service records” related to the identified sewer line. Given the City’s explanation, the Office finds that the Appellant has not made a *prima facie* case that the maintenance records exist.

Regarding the final report, the Appellant merely asserts that the record exists. But 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. Therefore, the Appellant has not made a *prima facie* case that the final report exists.

Accordingly, because the Appellant has not made a *prima facie* case that the City does not possess the maintenance logs or final report, the Office cannot find that the City violated the Act when it did not provide those 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
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

William Moore

Toni Burton, Hodgenville City Clerk

Jim Phelps, Mayor, City of Hodgenville

Joshua M. P. Cooper, Hodgenville City Attorney