



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

25-ORD-409

December 18, 2025

In re: Mohamed Aly/Kentucky Real Estate Authority

Summary: The Kentucky Real Estate Authority (“the Authority”) did not violate the Open Records Act (“the Act”) when it did not grant a request seeking records that it does not possess or information.

Open Records Decision

On November 7, 2025, Mohammed Aly (“the Appellant”) submitted a request to the Authority seeking records associated with a particular case before of the Kentucky Real Estate Commission (“the Commission”). In response to that request, the Authority invoked KRS 61.872(5) to delay its final production of records, explaining that it had identified 667 unique emails and other records constituting over 1,500 pages that were responsive to the Appellant’s request.¹

After receiving that response, on November 10, 2025, the Appellant submitted a new request. That request (1) sought an index of all records identified in the Authority in response to his previous request, (2) asked whether any of the identified records were created prior to June 25, 2025, and (3) asked that the responsive records be grouped into particular categories. In response, the Authority stated that it does not possess records responsive to the Appellant’s request. This appeal followed.

Regarding the requested index, the Authority maintains that no such index exists. 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*

¹ The Appellant submitted a separate appeal regarding that request, and in 25-ORD-408, the Office found no violation of the Act, reasoning that the Authority’s delay was reasonable and made in good faith.

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.

The Appellant has not made a *prima facie* case that the Authority currently possesses the index he requested. Rather, he insists that the Authority's ability to estimate the number of responsive records indicates that an index must exist. But this statement is no more than a mere assertion that the index should exist, and such an assertion does not make a *prima facie* case that the agency in fact possesses additional responsive records. *See, e.g.*, 23-ORD-042. Moreover, the Act does not require a public agency to create a record to satisfy a request. *See, e.g.*, 24-ORD-278; 24-ORD-229; 16-ORD-052. Here, the Appellant has not made a *prima facie* case that the Authority *currently* possesses the requested index. Accordingly, the Office cannot find that the Authority violated the Act when it did not provide an index it does not possess.

Regarding the remains parts of the Appellant's request, the Authority states that those are requests for information. The Authority is correct. *See, e.g.*, 23-ORD-257 (denying a request for "the full names" of correctional officers on duty at a specific time); 22-ORD-054 (denying a request asking "who ordered" a letter to be written, how much the author was paid, and "why" the letter "was circulated"). The Act does not require public agencies to answer interrogatories or fulfill requests for information. Rather, it only requires public agencies to produce extant public records for inspection. *See* KRS 61.872(2)(a) (requiring a request to inspect records to include, *inter alia*, a description of "the records to be inspected"); *Dep't of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) ("The [Act] does not dictate that public agencies must gather and supply information not regularly kept as part of its records."). Accordingly, the Authority did not violate the Act when it did not grant the Appellant's requests for information.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Mohamed Aly
Gerald W. Florence, Records Custodian/Executive Advisor, Kentucky Real Estate Authority
Patrick Riley, General Counsel, Kentucky Real Estate Authority
Tracy W. Carroll, Executive Director, Public Protection Cabinet, Kentucky Real Estate Authority