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26-ORD-004

January 9, 2026

In re: Shane White/Jefferson County Public Schools

**Summary:** The Office cannot find that the Jefferson County Public Schools (“JCPS”) violated the Open Records Act (“the Act”) because the Office cannot find that: (1) JCPS possesses or should possess additional records that it has not provided; (2) JCPS improperly deflected its responsibility to another agency; or (3) JCPS failed to address each category of records requested in its responses or that JCPS otherwise violated the Act.

***Open Records Decision***

Shane White (“Appellant”) submitted a series of requests to JCPS related to a specific incident that occurred on JCPS property involving his vehicle.<sup>1</sup> JCPS granted his request and, “to the extent they exist and are in JCPS’s possession,” attached the records. JCPS also advised the Appellant to contact the Louisville Metro Fire Department, which is the agency investigating the fire, and provided its contact information. The Appellant submitted a follow up request for “all available security camera footage” related to the specific incident. JCPS denied this request because it does “not possess records responsive to this request.”<sup>2</sup> The Appellant initiated this appeal on three bases: (1) JCPS possesses or should possess additional records that it has not provided; (2) JCPS improperly deflected its responsibility to another agency; and (3) JCPS failed to address each category of records requested.

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<sup>1</sup> The incident involved a shed that was destroyed by fire, near which the Appellant’s vehicle was parked, resulting in the “destruction” of his vehicle.

<sup>2</sup> Specifically, JCPS stated it does “not have security footage of the shed” involved in the specific incident.

Once a public agency states affirmatively that no further responsive records exist, 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 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). A requester must provide some evidence to make a *prima facie* case that the requested records exist, such as the existence of a statute or regulation requiring the creation of the requested records or other factual support for the existence of the records. See, e.g., 21-ORD-177; 11-ORD-074. A requester’s bare assertion that certain records should exist is insufficient to make a *prima facie* case that the records actually do exist. See, e.g., 22-ORD-040.

Here, to make a *prima facie* case that JCPS possesses or should possess additional records that it did not provide, the Appellant asserts that the fire relating to his request “occurred on school grounds during a school event” and that if JCPS does not possess additional records it indicates a “failure to maintain legally required records, or [a]n improper withholding of responsive records.” As proof, the Appellant states that, during a telephone call, a specific JCPS “Safety Administrator” told him “that the video evidence from the area had been collected by upper administration for review.” Here, the Appellant’s bare assertions fail to point to a statute, regulation, or some other factual support establishing a *prima facie* case that the requested surveillance footage of the specific incident existed at the time of his request. At best, the Appellant has provided some evidence that some, possibly unrelated, footage existed. Accordingly, the Office cannot find that JCPS violated the Act when it did not provide a record that it claims does not exist.

Turning now to the Appellant’s claim that JCPS improperly deflected its responsibility to another agency, “[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 and location of the official custodian of the agency’s public records.” KRS 61.872(4). However, the Office has found that KRS 61.872(4) applies only if the correct custodian of the requested records is known to the agency to which the request is directed. See, e.g., 16-ORD-034, 11-ORD-024, 06-ORD-040, 05-ORD-190. Here, JCPS did not possess the record the Appellant requested, and notified him of the agency investigating the incident related to his request. The Appellant presented no proof that JCPS knew of any other person within its agency, or elsewhere, that had custody and control of the record he requested. As such, the Office cannot find JCPS violated the Act when it provided the name and

contact information of the public agency investigating the fire that is the subject of the Appellant's request.

Lastly, the Appellant claimed JCPS violated the Act when it "did not issue individual determinations for each category of requested records, and did not cite any statutory exemption authorizing nondisclosure, as required by KRS 61.880(1)" as well as that "JCPS has cited no exemption under KRS 61.878 for withholding any category of requested records." However, JCPS did not purport to withhold any category of records, but claimed to provide all responsive records in its possession. A statement from a public agency that it has disclosed all responsive records is "tantamount to an affirmative statement that the remaining records requested do not exist." 04-ORD-040.

Moreover, the Office cannot resolve a factual dispute between the parties to an appeal. *See, e.g.*, 22-ORD-010 (declining to resolve a factual dispute that the records received were different from the records requested). Here, the Appellant submitted a request to JCPS containing several subparts, which the Appellant supplemented with a request for "all available security camera footage." JCPS responded that, "to the extent they exist and are in JCPS's possession," it was providing the records. The Appellant then sought clarification of JCPS's response. JCPS responded that it does "not possess records responsive to this request" and does "not have security footage of the shed" related to this incident. As such, it seems that there is a factual dispute between the parties as to the responsiveness of the records JCPS provided to the Appellant. The Office is unable to resolve this factual dispute, and so cannot find that JCPS violated the Act when it provided records it claims are responsive to all parts of the Appellant's request.<sup>3</sup>

In sum, the Office cannot find that: (1) JCPS possesses or should possess additional records that it has not provided; (2) JCPS improperly deflected its responsibility to another agency; or (3) JCPS failed to address each category of records requested in its responses. The Office therefore cannot find that JCPS violated the Act.

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

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<sup>3</sup> Moreover, JCPS's responses suggest that all records responsive to the Appellant's request have been provided and that, if requested records were not provided, it is because those records do not exist. As discussed above, the Appellant failed to make a *prima facie* case that JCPS possesses any additional records responsive to his request.

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/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

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