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26-ORD-010

January 13, 2026

In re: Melanie Barker/Finance and Administration Cabinet

Summary: The Finance and Administration Cabinet (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it denied a request for records that are not within its possession, custody, or control.

Open Records Decision

Melanie Barker (“Appellant”) submitted a request to the Cabinet for the “Employee Identification Badge” for two named individuals. The Appellant specified that the records should include “a photo” and that she wanted “that photo for both as well.” The Cabinet invited the Appellant to clarify her request.¹ The Appellant then clarified her request.² The Cabinet responded that, “[a]fter a diligent search, the [Cabinet] was unable to locate any records responsive to [the Appellant’s] request because it does not maintain the records [she] requested.” The Cabinet explained that “[t]here is no record maintained in the system that retains completed badges” but that “[t]here were five (5) photos retained in the system,” which it provided. The

¹ Specifically, the Cabinet denied her request because “[t]he scope of your request is much too broad” because there are “numerous [Cabinet] employees with those names.” The Cabinet invited the Appellant to “provide more detail to narrow [her] request, thereby allowing [the Cabinet] to complete a search and respond.”

² Specifically, the Appellant responded that there were four Cabinet employees with those names and that she wanted all four of their records. The Cabinet informed the Appellant that “[t]here are more than 8 people with those 2 names in our data base” and asked her “[w]hich Cabinet do they work for, or what do they do?” The Appellant inquired why “only 4 people of each name come up on [the Cabinet’s] transparency website.” The Cabinet asked whether the Appellant was “requesting a record or document on how transparency works.” The Appellant informed the Cabinet that she wanted the records of the four specific employees of each name on its “transparency website” and asked if its “database include[s] Former & Current Employees by these names.”

Cabinet then referred the Appellant to three other public agencies that might possess records responsive to her request. This appeal followed.³

Initially, and again on appeal, the Cabinet has stated that it does not possess any records responsive to the Appellant's request. 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 requested records exist, 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 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 the Cabinet does or should possess additional records, the Appellant asked, “If records do NOT exist and are NOT in their custody — why did they send 6 pictures without badge identification information?” She further states that “there are 8 on the transparency website and [the Cabinet] said there was way more in their database.”⁴ The Appellant does not provide any statute, regulation, or any authority to support her allegations.⁵ As a result, the Appellant fails to make a *prima facie* case that any responsive records

³ The Appellant raises many questions, such as “who should have the records” she seeks. The Office is unable to answer such questions, as they are beyond the scope of an appeal under the Act. *See* KRS 61.880.

⁴ The Appellant also informed the Office that she reached out to the Personnel Cabinet, which told her the Cabinet “has the records.” The Appellant did not provide the Office with any proof related to her communications with the Personnel Cabinet.

⁵ Moreover, the Appellant requested an “Employee Identification Badge” for employees with specific names she supplied, but the records the Cabinet provided to her, per her description are merely photographs, not identification badges. The Cabinet being able to provide her photographs of several employees does not make a *prima facie* case that the Cabinet possesses any employee identification badges. Additionally, the fact that there are fewer employees with the specific names on the “transparency website” than the Cabinet informed the Appellant exist in its system could be for any number of reasons, and the Appellant supplied no proof at all, just bare assertions. On appeal, the Cabinet explains that the “transparency website” only contains some information and not all information concerning its employees.

exist or were ever in the Cabinet's possession.⁶ Accordingly, the Cabinet did not violate the Act when it denied a request for records that are not within its possession, custody, or control.⁷

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/ Matthew Ray
Matthew Ray
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Distributed to:

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⁶ On appeal, the Cabinet adequately explains why it does not possess any records responsive to the Appellant's request. The Cabinet explains that, while it "creates and distributes employee badges for some state employees, it does not produce all of these."

⁷ The Cabinet, on appeal, offers an alternative basis for denying the Appellant's request because many of her communications were "requests for information, rather than requests for records." Since the analysis above is dispositive of this appeal, it is unnecessary to address the Cabinet's alternative basis for denial.