



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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**26-ORD-025**

January 21, 2026

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 provided all responsive records within its possession.

### *Open Records Decision*

Mohamed Aly (“Appellant”) submitted a three-part request to the Authority, seeking records regarding a specific complaint. The Authority granted the Appellant’s request and stated it had identified 108 pages of responsive records, which it provided. The Authority also informed the Appellant, “To the extent this request seeks for the Authority to support, explain, or justify certain processes or policies, please be advised this request is denied, as your request is for information, rather than a request for specifically described records.” The Appellant initiated this appeal on two grounds: (1) that the Authority withheld records responsive to his request,<sup>1</sup> and (2) that the Authority did not specifically respond to a contingent part of his request with a statement that certain records do not exist.<sup>2</sup>

First, the Appellant asserts the Authority withheld records responsive to his request. On appeal, the Authority affirmatively states it “produced all responsive, non-exempt records” that it possesses. Once a public agency states affirmatively that it does not possess additional records, the burden shifts to the requester to make a

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<sup>1</sup> Specifically, the Appellant asserted the Authority “improperly withheld its internal procedural documents by mischaracterizing the request as one for ‘information’ rather than ‘specifically described records.’”

<sup>2</sup> The Appellant specifically asserted the Authority “failed to provide a written statement confirming the nonexistence of a formal notice of entry if no such record exists, as explicitly requested in the contingent portion of the ORA request.”

*prima facie* case that additional records exist 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 agency possesses additional records, “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 a statute or regulation requiring the creation of the requested record or other factual support for the existence of the record. *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 in the possession, custody, or control of the agency. *See, e.g.*, 22-ORD-040.

Here, to make a *prima facie* case that the Authority possesses or should possess additional responsive records it did not provide, the Appellant asserts that the Authority’s “own public-facing guidance creates a clear expectation as to how legal representation is to be formally established in its complaint process.” The Appellant further asserts that on the Authority’s “official ‘File a Complaint’ webpage, [the Authority] advises: ‘If you have or have acquired legal representation at any time during this process, we ask that the Representing Attorney please notify the Commission via a Notice of Entry letter mailed to the address above.’”

Yet, the Appellant does not provide any such “guidance,” a citation to such “guidance,” or any statute or regulation requiring the creation of the requested record. At best, the Appellant has made a *prima facie* case that the Authority may have an expectation generally that “legal representation is to be formally established,” but not that legal representation in any particular case or matter was formally established. Moreover, per the Appellant’s assertion, it is the responsibility of the “Representing Attorney” to “formally establish” such “legal representation” with the Authority and the Appellant provides no evidence that an attorney did so with respect to the specific complaint at issue. Thus, the Appellant has failed to make a *prima facie* case that the Authority possesses or should possess any additional responsive records that it did not provide. Therefore, the Office cannot find that the Authority violated the Act when it did not provide any records formally establishing legal representation in a specific case.

Second, the Appellant asserts the Authority did not specifically respond to the contingent part of his request with a statement that certain records do not exist. A public agency discharges its duty under the Act by affirmatively stating that no

responsive records exist. *See* 99-ORD-150. A statement from a public agency that it has provided all records within its possession is “tantamount to an affirmative statement that the remaining records requested do not exist.” 04-ORD-040. Here, the Authority stated it had identified a certain number of records as responsive and produced those records. On appeal, the Authority affirms that it “produced all responsive, non-exempt records”<sup>3</sup> and denied only those portions that asked the Authority to explain certain processes.<sup>4</sup> Thus, the Authority did not violate 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 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](mailto: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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<sup>3</sup> The Authority does not claim that it withheld any records based on an exemption, but rather, that all responsive records were non-exempt.

<sup>4</sup> The Authority notes that the Appellant’s records request “is requesting information that establishes legal, statutory, or regulatory authority for Authority procedures.” The Act applies to requests for specifically described records, not requests for information. *See* KRS 61.872(2)(a).