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26-ORD-044

February 10, 2026

In re: Tracy's Landscaping Materials/Franklin County Fiscal Court

Summary: The Franklin County Fiscal Court ("Fiscal Court") initially violated the Open Records Act ("the Act") by failing to send a written response within five business days of receiving the request per KRS 61.880(1), either confirming or denying the existence of certain records. However, the Fiscal Court did not violate the Act in partially denying the request because it provided all existing, responsive records it possesses.

Open Records Decision

On December 31, 2025, Kenneth Tracy of Tracy's Landscaping Materials ("the Appellant"), submitted a request to the Fiscal Court for a copy of "all permit applications and any permit approvals/denials (building, electric, P-card, T-card, etc.), as well as other records pertaining to 525 Scruggs Lane S, Frankfort, Franklin County, Kentucky 40601 from 2000 to present." The Fiscal Court provided the Appellant with a copy of responsive and nonexempt records electronically on January 9, 2026, but did not include a written response per KRS 61.880(1) stating whether certain records did or did not exist. On January 13, 2026, the Appellant initiated this appeal,¹ acknowledging receipt of certain records, including the "local floodplain permit" for the County, but claiming that "several records" were missing, such as Page 4, Section 2, and Page 6 of the permit; a copy of the requested "T-card and P-card"; and the "email and/or fax with the date and time when the electrical inspector sent approval to the electric company to turn on electric services." After this appeal was initiated, the Fiscal Court sent a copy of pages 4 and 6 of the Floodplain Development Application and a copy of the P-card from the Franklin County Health Department to the Appellant on January 14, explaining that these records were inadvertently omitted from the initial disclosure. With regard to any responsive

¹ The January 13 email initiating this appeal on behalf of the Appellant came from the email account of a Tera Hensley but identifies only "Tracy's Landscaping Materials" as the signatory.

emails or facsimile transmissions, the Fiscal Court further advised that its diligent search did not yield any.

Upon receipt of a request for public records, a public agency shall determine within five business days “whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period of its decision.” KRS 61.880(1). Here, the Fiscal Court sent a link to the Appellant that directed her to existing, responsive records it was providing to her without further comment or explanation. The Fiscal Court was required to explain that additional records do not exist in the possession of the agency. “A public agency violates KRS 61.880(1) ‘if it fails to advise the requesting party whether the’ records exist.” *Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 873 (Ky. App. 2021) (quoting 20-ORD-010). A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090; 25-ORD-027. When a public agency denies a request under the Act, its written response must “include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). Its response cannot be merely “limited and perfunctory.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). Accordingly, the Fiscal Court violated the Act by failing to affirmatively state in the agency’s initial response whether certain records did or did not exist.

However, the Fiscal Court remedied these deficiencies upon receipt of this appeal. Because the Fiscal Court has now provided the Appellant with a copy of all existing, responsive records in the possession of the agency, the issues regarding those records are moot under 40 KAR 1:030 § 6.² The remaining question is whether the Fiscal Court erred in denying the Appellant’s request as to nonexistent records. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make a *prima facie* showing that the requested record exists. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* showing that the record does or should exist, then the public 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’s bare assertion that a public agency must possess the requested record is not adequate to make a *prima facie* showing that the agency does, in fact, possess the record. *See, e.g.*, 22-ORD-040. Rather, to make a *prima facie* case showing that the agency possesses or should possess the requested record, the requester must provide a statute, regulation, or factual support for that contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. Here, the Appellant has not made a *prima facie* showing that the Fiscal Court possesses any additional records. Accordingly, the Fiscal Court did not violate the Act when it was

² Under 40 KAR 1:030 § 6, “If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.”

unable to provide the Appellant with a copy of the requested email or facsimile transmission.

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/ Michelle D. Harrison
Michelle D. Harrison
Assistant Attorney General

#46

Distributed to:

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