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26-ORD-046

February 12, 2026

In re: Tonya Hughes Simpson/Georgetown-Scott County Regional Airport

Summary: The Georgetown–Scott County Regional Airport (“the Airport”) did not violate the Open Records Act (“the Act”) by providing a copy of all existing records it possesses that are responsive to a request as written.

Open Records Decision

On December 22, 2025, Tonya Hughes Simpson (“the Appellant”) submitted a request to the Airport for copies of public records in the possession of the Airport “related to drainage, erosion, and environmental impacts affecting my property located at 6324 Paris Pike, Georgetown, Kentucky, which adjoins airport property.”¹ On January 6, 2025, the Airport responded, stating it was providing the Appellant with records in the Airport’s possession responsive to items 1, 2, and 3 of the request following its reasonable search, and further advised it did not possess any records responsive to items 4 and 5 of the request. This appeal followed.

¹ In particular, the Appellant requested copies of the following:

1. Records identifying all stormwater outfalls, drainage pipes, culverts, or discharge points located on airport property that discharge toward or onto the property at 6324 Paris Pike, including maps, diagrams, or descriptions of location.
2. Records of water quality testing, environmental sampling, or monitoring conducted by or for the airport related to any outfalls discharging toward or affecting my property, including but not limited to results from 2006 to present.
3. Records of erosion, flooding, sedimentation, or dam/pond impacts affecting or reported in connection with my property, including internal reports, complaints, photographs, or correspondence.
4. Records related to Division of Water enforcement actions, notices of violation, consent orders, fines, or corrective actions involving airport drainage or outfalls that discharge toward or affect my property.
5. Records of complaints or communications (internal or external) referencing runoff, drainage, erosion, fish kills, sheen, or water quality concerns associated with drainage from airport property affecting adjacent landowners.

The Appellant claims the Airport's initial response was deficient in "failing to explain why no responsive records exist from 2021 to present, despite the fact that stormwater systems and drainage infrastructure are ongoing, regulated operations." She further contends that a public agency is required to do more than assert that it conducted a "reasonable search" and, where records "should logically exist," the public agency must explain their nonexistence. In support of her position that additional, responsive records must exist in the possession of the Airport, the Appellant relies on "[d]ocumentary [e]vidence" confirming that stormwater construction occurred after 2021, namely, "excerpts from the stormwater and erosion-control construction project issued for construction in 2022[.]" *i.e.*, the RSA Improvements Project, which "necessarily generated inspection, compliance, and monitoring records from 2021 to present" that were not provided to her. The Appellant also cites what she perceives to be the "[i]nternal [i]nconsistency" in the Airport's position that her complaint is the only record of "erosion, flooding, sedimentation, or dam impacts" given the "existence of a large, recent stormwater and erosion-control construction project." Lastly, the Appellant notes the Airport failed to produce records pertaining to a "prior stormwater complaint submitted by my mother in or around 2006, and the resulting enforcement action by the Kentucky Division of Water concerning the Airport's failure to identify and claim stormwater outfalls." For these reasons, the Appellant maintains the "search conducted was not reasonably calculated to locate all responsive records" and requests that this Office order the Airport to: (1) conduct a "[s]upplemental search, including engineering, construction, stormwater, and contractor records from 2021 to present"; (2) provide all responsive and nonexempt records to her; and (3) "[p]rovide a sworn explanation detailing why such records do not exist, including applicable retention or destruction policies."

In response, the Airport first notes the Appellant has confused the parties' respective burdens of proof regarding nonexistent records and correctly states that she does not make a *prima facie* showing that "additional documents *responsive to her request* exist" in the possession, custody, or control of the Airport. Regarding the allegedly "unexplained" absence of records from 2021 to present and the "documentary evidence" that Appellant provided to confirm that stormwater construction occurred after 2021, the Airport clarified that such records are beyond the scope of the Appellant's request, which was limited to records documenting stormwater outfalls, drainage pipes, culverts, or discharge points "that discharge toward or onto *the property at 6324 Paris Pike*," are related to outfalls "discharging toward or affecting *[the Appellant's] property*," document erosion, flooding, and sedimentation "in connection with" her property, or are related to Division of Water enforcement actions involving drainage or outfalls that "discharge toward or affect *my property*" (emphasis added).

The Airport emphasizes that the Appellant does not assert, nor is there any evidence to substantiate, that the RSA Improvements Project “concerns any issues related to discharge toward or affecting [the Appellant’s] property.” Significantly, the Airport explains the RSA Improvements Project affected the northern portion of the Airport property and “had no impact whatsoever on [Appellant’s] property, which is located near the southern portion of” the property.² That is the reason for the alleged inconsistency between the records provided and the recent construction; the “only inconsistency is the vast difference between the narrower scope of [Appellant’s] request and the scope of the” records to which she claims to be entitled on appeal. With regard to records pertaining to a complaint her mother submitted approximately 20 years ago, the Airport states that a thorough search of its physical and electronic files confirmed that it does not possess those records. Nor does the fact the Appellant obtained a copy of such records from a different public agency necessarily establish the Airport maintained a copy of those records.

Once a public agency states affirmatively that certain records do not exist, the burden shifts to the requester to make a *prima facie* showing that the requested records do or should 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* showing that the records do 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 should or must possess the requested records is not adequate to make a *prima facie* showing that the agency does, in fact, possess the records. *See, e.g.*, 22-ORD-040. Rather, to make a *prima facie* showing the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or other 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 additional records exist in the Airport’s possession that are responsive to her original request. However, even assuming the Appellant has made a *prima facie* showing that some additional records did or should exist in the Airport’s possession, it has explained on appeal that any existing records it may possess related to the RSA Improvements Project are not responsive to the Appellant’s request.

The Office agrees with the Airport. *See* 25-ORD-149; 25-ORD-347. The Office’s assessment of the Appellant’s request is “confined to the four corners” of the original request, notwithstanding any subsequent attempts by the Appellant to modify her description of the records sought or to provide additional context on appeal. 13-ORD-015; 14-ORD-073; 17-ORD-116; 19-ORD-166; 19-ORD-192. Regarding records

² The Airport also contacted the engineering firm responsible for the RSA Improvements Project to confirm that records it possesses “do not relate to impacts affecting [Appellant’s] property.”

potentially responsive to item 5 of the request, the Airport has explained that, upon receipt of this appeal, it conducted a thorough search of both its physical files and its electronic files. An adequate search for records is one using methods reasonably designed to find responsive records. *See, e.g.,* 95-ORD-096; 25-ORD-120. Given the age of the alleged complaint and the absence of any legal authority or facts to refute its position that no records were located, the Office has no basis upon which to find the Airport violated the Act in the disposition of the Appellant's request.

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

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Assistant Attorney General

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Distributed to:

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