



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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26-ORD-060

February 20, 2026

In re: Kurt Wallace/Bullitt County Attorney

Summary: The Bullitt County Attorney (“County Attorney”) violated the Open Records Act (“the Act”) by failing to issue a written response within five business days of receiving a request and by denying the request for certain records because another public agency also possesses those records. However, the County Attorney did not violate the Act by denying the request as to records that she does not possess.

Open Records Decision

On January 9, 2026, Kurt Wallace (“the Appellant”) submitted a request to the County Attorney for 12 categories of records documenting how the County Attorney processed each request he submitted to her and every “OAG Open Records matter involving Kurt Wallace in which the OAG found the Bullitt County Attorney’s Office” violated the Act during the period from November 21, 2024, to December 31, 2025. On January 23, 2026, the Appellant initiated this appeal, challenging the County Attorney’s failure to issue a timely response to his January 9 request.

In response, the County Attorney stated the Appellant’s request “was inadvertently overlooked,” and her “failure to respond was unintentional.” Regarding two of the categories of records sought, the County Attorney explains that her Office “is not the official records custodian of any such records,” and that she had referred the Appellant to this Office to obtain those records. Regarding most of the records sought, the County Attorney states, “The Bullitt County Attorney’s Office has possession of no such documents and believes that no such documents exist.” Regarding one category, the County Attorney states that her Office “believes the current request is the only outstanding Open Records Request submitted by [the Appellant].” And finally, the County Attorney provided the Appellant with a copy of one email responsive to one other category.

Under the Act, a public agency must respond to a request for records “within five (5) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of

any such request.” Here, the Appellant contends the County Attorney “failed to acknowledge receipt of the request, failed to provide a reason for withholding the records, and failed to cite a statutory exemption for failure to provide the records.” The Appellant submitted his request on January 9 but had not received any response as of January 23. On appeal, the County Attorney does not dispute that she failed to timely respond to the Appellant’s request. Accordingly, the County Attorney violated the Act by failing to respond in writing within five business days of receiving the Appellant’s request. 25-ORD-092.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to make a *prima facie* showing that the records exist and that they are within the public 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* showing that the records do or should exist in the agency’s possession, “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). To make a *prima facie* showing that the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or factual support for that contention. *See, e.g.*, 23-ORD-207; 21-ORD-177; 11-ORD-074. Here, the Appellant has not made a *prima facie* showing that the County Attorney possesses any responsive records beyond the single email produced. Accordingly, the County Attorney did not violate the Act when it could not provide the Appellant with records that she does not possess.

However, the County Attorney is not relieved of her duty to provide the Appellant with copies of any existing, responsive, and nonexempt records in her possession, regardless of whether the Appellant may also be able to obtain those copies from another public agency. 12-ORD-216; 09-ORD-199; 00-ORD-16. The Office has long rejected this argument, holding it “does not support nondisclosure, and is not a legally recognized basis for denying an open records request.” 09-ORD-199 (citing 99-ORD-121). Where, as here, any responsive records are in the possession of the public agency, those records are public records of that agency, and the agency is “obligated to honor that request notwithstanding the fact that [they] might have also been obtained elsewhere.” 15-ORD-017; *see also* 12-ORD-216; OAG 91-21; 10-ORD-060. Therefore, the County Attorney violated the Act when she withheld any responsive records in her possession.

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

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Distributed to:

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