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26-ORD-061

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In re: Lee A. Jackson/University of Kentucky

Summary: The University of Kentucky (“the University”) did not violate the Open Records Act (“the Act”) by denying a request for a nonexistent record. Nor was the University required to compile the requested information or create a record to fulfill the request.

Open Records Decision

On January 16, 2026, Lee A. Jackson (“the Appellant”) of the Lyman T. Johnson Education Foundation, Inc., submitted a request to the University for “an Excel xlxs or csv file of the name, home address, phone number (cell [and landline]) and e-mail addresses of all University of Kentucky African American Alumni as taken from the UK Alumni Association database.” The University received the Appellant’s request on January 20, 2026, and sent a timely response on January 27, 2026, initially stating that “no such record exists.” Next, the University noted that race has not been designated as “directory information”¹ for students and, therefore, the University does not possess any responsive records. This appeal followed.²

On appeal, the Appellant states, “The information does exist because I have personally seen a list in the past with African American Alumni.” He does not provide any evidence to substantiate this assertion. Having reiterated its original arguments, the University further argues on appeal that the Appellant “does not state when he believes that he saw such a list. . . . It may be that he saw a list of alumni, and he erroneously believes it was a list of African American alumni. It may be that he saw

¹ “[D]irectory information’ relating to a student” may include “the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous education agency or institution attended by the student.” 20 U.S.C. § 1232g(a)(5)(A).

² The University argued that, even if the requested record did exist, disclosure of the requested personal information “is also considered an invasion of personal privacy” and, therefore, such personal information is exempt from disclosure under KRS 61.878(1)(a).

a list of some, but not all, African American alumni.” Alternatively, the University suggests that the Appellant may have seen of list of all African American alumni, but such a record simply no longer exists.³ Thus, the University maintains that no responsive record currently exists and that it is not statutorily required to create such a record.

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.*, 25-ORD-209; 22-ORD-040. Rather, to make a *prima facie* showing 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. “Merely asserting that additional records exist does not establish a *prima facie* case that they do or that an agency has failed to conduct an adequate search.” 24-ORD-023; *see, e.g.*, 23-ORD-042 (an assertion that an employee must have sent or received emails during a specific time failed to make a *prima facie* case that emails existed but were not provided).

Upon receipt of the University’s response to his appeal, the Appellant provided the Office with a copy of three records that he maintains prove “that UK has in the past compiled such a list.”⁴ However, the fact that the Appellant possesses a 2017 database containing some or all of the requested information does not establish the University has ever compiled the requested information, let alone that the University *currently* possesses such a list. Nor does the existence of an undated spreadsheet of unknown origin that identifies the members of the African American Alumni Association refute the University’s position that it does not create or maintain such a list. Likewise, providing a single email titled “NPHC Targeted email Homecoming 2025” does not constitute a *prima facie* showing that the University possesses a record containing the current home address, personal telephone number, and personal email address of every African American alumnus of the University. In sum, the Appellant has not made a *prima facie* showing that the University currently

³ The University also reiterated that its “student directory information, which is a substantial source of information in the UK Alumni data base, does not include race.”

⁴ Specifically, the Appellant provided a copy of an Excel spreadsheet entitled, “LTJ 2017 Alumni Database”; an Excel spreadsheet entitled, “email UK African American Alumni”; and a copy of an email concerning the 2025 National Panhellenic Council Homecoming Step Show.

possesses a record containing the requested information. Thus, the University did not violate the Act by denying the Appellant's request.

Further, the Act only requires a public agency to comply with requests for existing public records. See KRS 61.872(2)(a) (providing a public agency "may require a written application . . . describing the records to be inspected"); *Dep't of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) ("The [Act] does not dictate that public agencies must gather, and supply information not regularly kept as part of its records."). In other words, the Act does not require a public agency to compile information or create a record to fulfill a request. Rather, the Office has long recognized that the Act "does not require public agencies to carry out research or compile information to conform to a given request." OAG 89-45; 25-ORD-373. Nor is a public agency "obligated to compile a list or create a record to satisfy an open records request." OAG 76-375; 25-ORD-373. Accordingly, the University is not required to compile information or create a record to comply with the Appellant's request, and the University did not violate the Act by denying the Appellant's request for a nonexistent record.

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.

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/s/ Michelle D. Harrison
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Distributed to:

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