COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

26-ORD-069

March 2, 2026

In re: Daniel Woodie/Campbell County Police Department

Summary: The Campbell County Police Department ("the Department") did not violate the Open Records Act ("the Act") when it did not provide records that do not exist or records that were not prepared, owned, used, in the possession of, or retained by the Department.

Open Records Decision

On December 6, 2025, Daniel Woodie ("the Appellant") submitted a three-part request for records pertaining to an individual police officer employed by the Department. First, the Appellant requested "[a]ny communications between" that individual and nine named persons, including the Appellant, "through any form and on any devices or accounts, including iCloud, social media, both department-owned and personal, from 2021-Present, including MDC 'chat' messages." Second, he requested "[r]ecords of any communications about [the Appellant] by [that individual] on any device or account, both department owned and personal, from 2021-present, including MDC 'chat' messages." Finally, the Appellant requested "[r]ecords of any queries or entries [the individual] has made through CAD, NCIC, or other LES systems regarding the above parties or [the Appellant] since joining" the Department.

In a timely response, the Department noted the police officer in question "just recently became an employee of this agency," and therefore, the Department "would not have records [responsive to the request] prior to November 11, 2025." The Department stated, "No communications records between [the individual] and the parties listed were found on or through official agency systems/records" and "no MDC 'Chat' messages were found relating to any of the parties listed." Further, the Department stated "IT conducted a comprehensive search and no communications by [the individual] were discovered on any of [the Department's] systems relating to any of the parties listed," and a "check of CAD records found no records pertaining to the parties listed." Additionally, the Department stated it "is not the repository of record nor maintains any records regarding inquiries for 'NCIC or other LES Systems.'" The

Department asserted it does "not maintain any forms of records for personal devices etc.," but only records "which would be collected and or retained on [Department] Mobile Data Computers (used in a police vehicle) and agency desktop computers with operate on [the Department's] server system." This appeal followed.

Once a public agency states affirmatively that no responsive records exist, the burden shifts to the requester to make a *prima facie* case that the records do 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* case that the records do or should exist, "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 requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record or other factual support for the existence of the records. *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. *See, e.g.*, 22-ORD-040. Moreover, a public agency "is responsible only for those records within its own custody or control." *City of Fort Thomas,* 406 S.W.3d at 856 (citing *Kissinger v. Reporters Comm. for Freedom of the Press,* 445 U.S. 136 (1980)). Here, the Appellant has not made a *prima facie* case that any responsive records exist in the Department's possession, custody, or control.

The Appellant's primary argument on appeal is that responsive records exist on the individual police officer's "personal devices and accounts" and that the Department must obtain those from him to fulfill the request.[1] "Public records," as defined by the Act, are records "prepared, owned, used, in the possession of or retained by a public agency." KRS 61.870(2). Here, the Appellant claims the police officer's personal devices and accounts are public records because he, individually, is a "public agency." As the Appellant points out, the definition of "public agency" under the Act includes "[e]very state or local government officer." KRS 61.870(1)(a). The Act does not, however, define "state or local government officer."[2] Although an elected official qualifies as a "local government officer" for purposes of KRS 61.870(1)(a), *see* 19-ORD-084 n.1, the individual police officer in this case does not hold an elective office.

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[1] The Appellant claims *Ky. Open Gov't Coalition, Inc. v. Ky. Dep't of Fish & Wildlife Res.,* No. 2022-CA-0170-MR, 2023 WL 7095744 (Ky. App. Oct. 27, 2023), *disc. rev. granted,* No. 2023-SC-0524 (Ky.), is the controlling law on the issue of whether messages stored in personal devices and accounts are "public records" under the Act. However, that decision is not yet final and is currently under discretionary review by the Supreme Court of Kentucky. Thus, the opinion has no controlling effect.

[2] The term "officer" does not have a general definition in the Kentucky Revised Statutes. Although a sworn peace officer might be considered an "officer" under some statutory definitions, the same is not necessarily true for purposes of the Act.

Moreover, in the context of incompatibility analysis,[3] the Office has found that not every law enforcement officer is a "state officer." *See, e.g.,* OAG 24-09 (finding that "Commonwealth detectives are state employees and not state officers"); OAG 21-04 (finding that a city police officer was not a municipal officer for incompatibility purposes). Indeed, the Kentucky Court of Appeals has held that a rank-and-file city police officer was not a public officer for incompatibility purposes because the city had not created a nonelected city office for police officers. *See Clark Cnty. Atty. v. Thompson*, 617 S.W.3d 427, 433 (Ky. App. 2021). As such, it appears the police officer identified by the Appellant in his request is more likely an employee of the Department and not an "officer." In 24-ORD-118, the Office found that "mere employees of a public agency" who were not "appointed by the Governor or confirmed by the Senate" but were "hired by the [state agency]," were not state government officers for purposes of the Act. *See also* 23-ORD-349. Here, similarly, the Appellant has not established that the police officer in question is a "local government officer" who is a "public agency" in his own right.

Moreover, even if the policeman were a "local government officer," it would be necessary to establish that any communications in his personal possession "were prepared in [his] official capacity" before those communications would constitute public records under the Act. 25-ORD-101; *see also* OAG 79-496. To establish this fact, the Appellant claims the records he seeks are "directly related to a closed investigation" that was conducted in the individual's previous capacity as an officer of the Park Hills Police Department.[4] But the Appellant did not direct this request to that agency, nor did he direct it to the police officer individually as a public agency. He requested the records from the Department. To the extent the police officer might have records in his personal possession that were produced during his prior employment, those records might have been "prepared" or "used" by the Park Hills Police Department within the meaning of KRS 61.870(2), or by the police officer himself in his official capacity (if he were a public agency). However, they were not prepared or used by *the Department,* from which the Appellant now seeks the records. Thus, the fact remains that the requested records are not "public records" within the possession, custody, or control of the Department. Accordingly, the Department did not violate the Act.

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[3] Here, "incompatibility" refers to the requirement in Section 165 of the Kentucky Constitution and KRS 61.080 that a "state officer" not also serve as an officer or employee of a municipality or county. Because the incompatibility statute and the Open Records Act both are codified in the same chapter of the Kentucky Revised Statutes, KRS Chapter 61, the cases and opinions evaluating whether a person is an "officer" for incompatibility purposes are relevant to deciding whether a person is an "officer" for purposes of the Act.

[4] In his request, the Appellant explained that the nine named persons were "individuals with which [*sic*] [the police officer] had official business while at Park Hills PD."

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Mr. Daniel Woodie
Steve Franzen, Esq.
Jim Luerson, Clerk
Craig P. Sorrell, Chief