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26-ORD-077

March 5, 2026

In re: Travon Byers/Northern Kentucky University

**Summary:** Northern Kentucky University (“the University”) violated the Open Records Act (“the Act”) when it did not grant or deny all parts of the Appellant’s request and when it directed the Appellant to its website in response to one part of the request. The University did not violate the Act when it did not provide records it does not possess.

***Open Records Decision***

On January 25, 2026, the Appellant submitted a six-part request for records related to his “disciplinary matter.”<sup>1</sup> On February 4, 2026, the University provided records responsive to the Appellant’s request for incident reports. Upon the Appellant’s inquiry, regarding the other parts of his request, the University stated that the produced records “are the only documents [it] ha[s] at this time” and that its policies and procedures are “posted” on its website. This appeal followed.

Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it and “notify in writing the person making the request, within the five (5) day period, of its decision.” If requested records do not exist, the agency must affirmatively so state within the five-day period provided in KRS 61.880(1). *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005).

Here, the University provided the Appellant with responsive incident reports, but it did not state whether it was granting or denying any other part of the

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<sup>1</sup> Specifically, the Appellant sought: (1) communications between certain University employees referring to him between December 10, 2025, and January 25, 2026; (2) a particular employee’s “complete incident report”; (3) University policies related to “evidence collection,” “incident reporting,” and report deadlines; (4) University policies related to “Housing operations and Resident Director operations and procedures”; (5) security footage capturing the movements of two individuals on January 11, 2026; and (6) “All incident reports” submitted by a particular employee during the previous two months.

Appellant's request until the Appellant inquired about them. A public agency cannot simply ignore parts of a request. *See, e.g.*, 21-ORD-090. Because the University's original response ignored every other part of the Appellant's request, its original response failed to comply with the Act.

The Appellant further argues the University violated the Act by only stating that its policies and procedures are posted on its website. Because the University's response merely references its website, it has required the Appellant to conduct his own search for the University's records. The Office has previously found that a public agency violates the Act when it requires a requester to conduct his or her own search on its website instead of gathering the available records and providing them directly to the Appellant. *See, e.g.*, 21-ORD-129; 17-ORD-177. Here too, the University violated the Act when it chose not to search for the requested policies and procedures and provide them to the Appellant.

Finally, the Appellant challenges the University's assertion that it has produced all responsive records. Once a public agency states affirmatively that no further responsive records exist, the burden shifts to the requester to make a *prima facie* case that additional records do exist. *See Bowling*, 172 S.W.3d at 341. 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.

Here, the Appellant has not attempted to make a *prima facie* case that the University possesses additional responsive records. Thus, the Office cannot find that the University violated the Act when it did not produce records it does not possess.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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](mailto:OAGAppeals@ky.gov).

**Russell Coleman**  
**Attorney General**

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

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Distributed to:

Travon Byers, Appellant

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