



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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26-ORD-082

March 10, 2026

In re: Arielle Zions/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it did not provide records that do not exist.

Open Records Decision

Arielle Zions (“the Appellant”) submitted a request to the Cabinet for certain records, which had been submitted to the Centers for Medicare and Medicaid Services “as part of Kentucky’s application to the Rural Health Transformation Program.”¹ In response, the Cabinet provided the “Project Abstract Summary” and the “Project Narrative Attachment Form” but denied all other parts of the request as preliminary drafts under KRS 61.878(1)(i). This appeal followed.

On appeal, the Cabinet states its grant application was finalized and approved, meaning it is no longer a preliminary draft under KRS 61.878(1)(i). The Cabinet therefore has provided those records to the Appellant. Thus, this appeal is moot as to the records provided. *See* 40 KAR 1:030 § 6 (“If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.”). However, the Appellant asserts that the Cabinet still has not provided all responsive records.

Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to make a *prima facie* case that additional 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*

¹ The Appellant specified that the request included the “Application for Federal Assistance”; “Budget Information for Non-Construction Programs”; “Project Abstract Summary”; “Project Narrative Attachment Form”; “Budget Narrative Attachment Form”; “Disclosure of Lobbying Activities”; “Project/Performance Site Location(s)”; and “Other Attachments Form.”

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 additional records exist, such as the existence of a statute or regulation requiring the creation of the records 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 exist or 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 identifies six categories of records she has not received.² However, the Appellant does no more than assert that she should have received those records. This does not establish a *prima facie* case that the records exist. Thus, the Office cannot find that the Cabinet violated the Act by not providing records it does not possess.

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:

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² These include the "Application for Federal Assistance"; "Budget Information for Non-Construction Programs"; "Budget Narrative Attachment Form"; "Disclosure of Lobbying Activities"; "Project/Performance Site Location(s)" and "Other Attachments Form."