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-113

March 23, 2026

In re: Kurt Wallace/Hillview Police Department

Summary: The Hillview Police Department ("the Department") did not violate the Open Records Act ("the Act") when it did not provide a specific exception for denying a request for records that it does not possess, when it denied a request for records it does not possess, or when it denied a duplicate request for records it previously provided.

Open Records Decision

Kurt Wallace ("Appellant") submitted requests to the Department for 32 types of records. The Department granted some of the requests and either provided responsive records or indicated that the records were previously provided. The Department denied other requests because it does not possess any responsive records. This appeal followed.[1]

Upon receipt of a request for public records, a public agency shall determine within five business days "whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period of its decision." KRS 61.880(1). When a public agency denies a request under the Act, its written response must "include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." KRS 61.880(1). Here, the Department did not withhold any responsive records.[2] Rather, in responding to each of the requests, the Department either provided responsive records, indicated it had previously provided responsive

[1] The Appellant makes several allegations against the Department and its employees that are unrelated to the Act. An open records appeal is not the appropriate forum to resolve issues unrelated to the Act because the Office's jurisdiction is limited to determining whether an agency violated the Act. *See* KRS 61.880(2)(a).

[2] The Department indicated it had previously provided many of the records requested.

records, or stated it did not possess responsive records. The Department was not required to provide a specific exception authorizing its denial of a request for records it does not possess. Those denials did not violate the Act.

Regarding the Department's refusal to provide records responsive to some of the requests on the grounds that it previously provided them to the Appellant, an agency is not required to fulfill a duplicate request. The Office has generally upheld the denial of a duplicate request for records as imposing an "unreasonable burden" under KRS 61.872(6). *See, e.g.,* 05-ORD-198. "To produce [records] once entails some inconvenience to the agency; to produce them three and four times requires a level of 'patience and long-suffering' that the legislature could not have intended." OAG 92-91 (quoting OAG 77-151). In 95-ORD-47, the Office stated that an agency is not "required to satisfy the identical request a second time in the absence of some justification for resubmitting that request." Thus, in 04-ORD-018, the Office found that a prisoner who had inspected his inmate file once was not entitled to view it again unless he could "explain the necessity of reproducing the same records which either already have been provided or have been inspected by him, such as loss or destruction of the records." This explanation need not be extensive. *See, e.g.,* 09-ORD-076 (finding an inmate was entitled to inspect the same medical records a second time when he had a new concern about a medical condition). Here, the Appellant already possesses the responsive records and has not articulated "some justification for resubmitting that request." As a result, the Office cannot find the Department violated the Act when it denied a duplicate request.

Finally, the Department maintains that it provided all records it possesses that are responsive to the Appellant's requests. 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 agency does or should possess the records, "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 Department possesses any additional responsive records that it has not already provided. Therefore, the

Department need not prove its search was adequate. Thus, the Department did not violate the Act when it could not grant the Appellant's request for 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.

Russell Coleman
Attorney General

/s/ Matthew Ray
Matthew Ray
Assistant Attorney General

#023

Distributed to:

Kurt Wallace
Jim Eadens
Karen Richard
Harlan Compton