



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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26-ORD-118

March 23, 2026

In re: Jennifer Simpson/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it did not provide videos it does not possess.

Open Records Decision

Jennifer Simpson (“Appellant”) submitted a request to KSP seeking all video capturing an assault that occurred on October 9, 2024, at a particular location. In response, KSP granted the request, providing three responsive videos.¹ This appeal followed.

The Appellant alleges that KSP has not provided all videos that are responsive to her request. Specifically, she alleges the videos she received show two additional troopers at the scene. Therefore, there should be additional footage associated with both troopers’ body-worn cameras and vehicle cameras.

Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make a *prima facie* case that the requested record does or should 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 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).

On appeal, KSP acknowledges that the body-worn camera footage sought by the Appellant should exist. According to KSP, the footage previously existed but was

¹ KSP redacted some personal information under KRS 61.878(1)(a). The Appellant has not challenged those redactions.

deleted. If a requester makes a *prima facie* case that a record should exist but the agency is unable to locate the missing record, the requester is entitled to an explanation of the reason why the record does not exist. *See Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011). Here, KSP explains that those troopers' actions at the time and location described by the Appellant "had been inadvertently categorized as 'No Police Action.'" Pursuant to KSP policy, body-worn camera footage that is labeled as "No Police Action" is deleted after 30 days "and the subject [body-worn camera] videos were purged per that schedule." Therefore, KSP has explained why its search did not result in the production of those videos. As such, KSP has satisfied the requirements of the Act.² The Office cannot find that KSP violated the Act when it did not produce a record it no longer possesses.

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.

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Distributed to:

Jenifer Simpson, Appellant
Nathan Goens, Assistant General Counsel, Justice and Public Safety Cabinet
Charles Bates, Staff Attorney III, Justice and Public Safety Cabinet

² The Office's review is limited to whether KSP violated the Act. *See* KRS 61.880(2)(a). The Office has no jurisdiction to determine whether KSP has complied with the public records retention laws. *See* KRS 171.410, *et seq.*

Sara Talarigo, Paralegal, Justice and Public Safety Cabinet
Ann Smith, Executive Staff Advisor, Justice