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26-ORD-180

April 27, 2026

In re: Chelsea Smith/Garrard County Board of Education

Summary: The Garrard County Board of Education (“the Board”) did not violate the Open Records Act (“the Act”) when it timely responded to a request under the Act and granted inspection of all responsive records in its possession.

Open Records Decision

On Sunday, March 22, 2026, at 11:15 p.m.,¹ Chelsea Smith (“the Appellant”) submitted a request to the Board for certain “records related to an incident involving” her child and a substitute teacher “that occurred on or about 3/20/2026 at Camp Dick Robinson” Elementary School. Specifically, she requested any “incident reports, behavior reports, or written documentation created by school staff”; “internal investigation records, findings, or administrative documentation”; “written statements from staff or witnesses”; “records reflecting disciplinary actions, investigations, or substantiated complaints involving the substitute teacher during [her] employment with Garrard County Schools, including while serving as a teacher or substitute”; “documentation regarding the substitute teacher’s training, district policies, or guidance related to student discipline, physical contact, or restraint”; “records showing when or whether the incident was reported to school administration, the district, or any external agency”; and “surveillance video [footage] capturing the incident or the time period 30 minutes before and after the incident.”

In a timely response on March 25, 2026, the Board stated it was providing “the report from the internal investigation conducted by” the school, which “should fulfill the open records request[,] except for the [records] related to training,” which were provided in a separate “attachment.” The Board further advised that a “video has been preserved, but it is from too far a distance to clearly determine individuals or actions.” On Friday, March 27, 2025, the Appellant requested to view the video the

¹ Because the Appellant submitted her request on a Sunday, it is deemed to have been received by the Board on the next business day, on Monday, March 23, 2026. *See, e.g.*, 26-ORD-072 n.1.

following Monday and complained that the Board had not provided any records responsive to several categories of her request. On March 30, 2026, the Board provided a document it described as “the report from the parent contact log in Infinite Campus that was completed on Friday,” March 27, 2026, and further stated, “At this time, that is the extent of the records to share.” After viewing the video on the morning of March 30, 2026, the Appellant initiated this appeal.

The Appellant claims the Board did not provide “[a]ll staff statements and incident reports related to the incident”; “[a]ll emails, communications, or correspondence related to the incident”²; “[a]ll security camera footage from the time and location of the incident”; or “[r]ecords of any prior complaints or investigations related to the staff involved in this incident,” and “provided only partial video footage from a distant camera that does not allow identification of events or individuals involved.” In response, the Board states it has “provided all existing records responsive to [the Appellant’s] original request” and “informed [the Appellant] no additional complaint/investigation records exist concerning the staff member involved in the incident.”

The Board has provided copies of some correspondence that took place after the Appellant initiated this appeal. On March 31, 2026, the Board informed the Appellant it had “secured additional footage of the camera angle [she had] viewed,” which “lasts for a longer period of time,” as well as some footage from a “second camera” that was “very foggy [and] almost not visible.” The Board stated it had otherwise “provided all the records currently available.” In reply, the Appellant did not attempt to make arrangements to view the additional footage, but asked the Board to confirm whether certain records existed that had not yet been provided, namely, “written staff statements or reports related to the incident,” “internal communications regarding the incident,” “documentation used in preparation of the principal’s incident report,” and “maintenance or operational records related to the camera referenced in this matter.”³ On April 2, 2026, the Board confirmed that no such additional records existed. Therefore, the Board asserts the Appellant has “been provided all existing records responsive to her original request,” she “is free to come inspect the other video recordings which were identified to her [on] March 31,” she “has been informed no additional complaint/investigation records exist concerning the staff member involved,” and “[n]o existing responsive records have been withheld from” the Appellant.

² “All emails, communications, or correspondence related to the incident” was not one of the categories of records requested by the Appellant.

³ To the extent the Appellant’s inquiry constitutes a separate open records request, it is not at issue in this appeal.

Once a public agency states affirmatively that it has provided all responsive records in its possession, the burden shifts to the requester to make a *prima facie* case that additional records 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 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 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 has not made a *prima facie* case that additional responsive records exist that have not been made available for her inspection.⁴ Accordingly, the Board did not violate the Act.

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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

Ms. Chelsea Smith
Grant R. Chenoweth, Esq.
Kevin Stull, Superintendent

⁴ Because the additional video footage has been made available, this appeal is moot as to that footage. 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.”).