



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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26-ORD-182

April 28, 2026

In re: Leah Kottmyer/Newport Police Department

Summary: The Newport Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it responded to the Appellant’s request providing all records it possessed. The Office lacks jurisdiction to consider whether the Department’s search for records was adequate when the Appellant did not provide a request seeking the records.

Open Records Decision

On March 25, 2026, Leah Kottmyer (“Appellant”) submitted a request to the Department seeking information related to her previous request for certain body-worn camera footage. Specifically, the Appellant requested: (1) “[w]ritten certification whether responding officers on April 5, 2025, were equipped with body-worn cameras”; (2) “[w]ritten certification whether any body-worn camera or dash camera recordings were generated at any time during the initial response or subsequent investigation”; (3) information about the deletion of the body-worn camera footage, including the relevant retention schedule, the date of deletion, certification of the records deletion; (4) records describing the search conducted for the body-worn camera footage; and (5) “written certification that body-worn camera footage was never created, if that is the case.” In a timely response, the Department issued a detailed response explaining why it no longer possesses the identified body-worn camera footage and providing records documenting when the footage was originally uploaded and subsequently deleted. This appeal followed.

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, the Appellant does not allege that the body-worn camera footage still exists. Rather, she asserts that she has made a *prima facie* case that the body-worn camera footage should exist and the Department must substantiate its search. However, the request at issue here is not a request for certain body-worn camera footage. Rather, it was a request for information and records related to the deletion of body-worn camera footage. Under KRS 61.880(2)(a), “[i]f complaining party wishes the Attorney General to review a public agency’s denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection.” Because the Appellant has not provided the Office with a copy of a request for body-worn camera footage, the Office has no jurisdiction to consider whether the Appellant has made a *prima facie* case that the footage exists or that the Department has established that its search was adequate.

Otherwise, the Appellant does not allege any violation of the Department’s response to her March 25 request. As such, the Office finds no violation by the Department.¹

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

¹ To the extent the Appellant alleges that the Department did not comply with its records retention schedule, the Office’s review is limited to whether the Department violated the Act. *See* KRS 61.880(2)(a). The Office has no jurisdiction to determine whether the Department has complied with the public records retention laws. *See* KRS 171.410, *et seq.*

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Distributed to:

Leah Kottmyer, Appellant

Tiffany Meyers, City Clerk, City of Newport

Dan Braun, Esq., City Attorney

Christopher Fangman, Newport Chief of Police

Derick Dieters, Newport Police Department, Executive Administrator

Stan Jones, Executive Assistant to City Manager