



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-188

May 1, 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 records it does not possess. The Office cannot resolve the dispute between the parties about the content of the records KSP did provide.

Open Records Decision

Jennifer Simpson (“the Appellant”) submitted a records request to KSP seeking records related to her “Internal Affairs complaint,” which she submitted on February 20, 2026.¹ In response, KSP provided the Appellant with four of its internal policies related to disciplinary actions, a copy of her complaint, and KSP’s response to her complainant. KSP explained that these were “all existing, responsive records” it located during its search. This appeal followed.

The Appellant alleges that KSP failed to provide its policy establishing the “one-year deadline for filing an Internal Affairs complaint,” and otherwise failed to provide all records related to her complaint.

First, KSP asserts that it did provide the Appellant with the policy setting forth the “one-year deadline for filing an Internal Affairs complaint.” As proof, it identifies General Order AM-E-1² as the policy setting forth the deadline, and it further explained where in the order that information can be found. Ultimately, the parties

¹ More specifically, she requested copies of: (1) the KSP policy “establishing a one-year deadline for filing an Internal Affairs complaint”; (2) records “referencing or supporting the statement in the denial letter that ‘this matter was fully addressed through the appropriate administrative process’”; (3) “supervisory reviews, administrative reviews, or internal assessments conducted regarding” the complained about conduct; (4) “investigative summaries, findings, or internal determinations regarding whether the troopers’ actions complied with [KSP] policies”; and (5) “correspondence, emails, or internal communications related to the decision to deny [the Appellant’s] Internal Affairs complaint.”

² The Appellant provided the Office with a copy of this policy in her original appeal submission.

disagree regarding the content of the provided policy. The Office cannot resolve factual disputes between a requester and a public agency about the content of the records produced. *See, e.g.*, 26-ORD-017; 22-ORD-246; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81. Here, therefore, the Office cannot resolve the factual dispute between the parties or find that KSP violated the Act.

Regarding the remaining parts of the Appellant's request, KSP maintains that it has provided all responsive records it possesses. 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). A requester's bare assertion that a public agency should or must possess the requested records is not adequate to make a *prima facie* showing that the agency does, in fact, possess the records. *See, e.g.*, 22-ORD-040.

Here, the Appellant alleges that KSP has not provided her with all responsive records. But the Appellant does no more than assert that additional records exist. This bare assertion does not make a *prima facie* case that KSP does or should possess additional records. Moreover, on appeal, KSP specifically explains that it possesses no “emails or other communications that discuss the purported denial” of the Appellant's complaint, nor does it possess “any investigative summaries, supervisory reviews, or other documents” related to the described incident “because no [Internal Affairs] investigation was conducted.” As such, the Appellant has done no more than allege that additional records exist. She therefore fails to make a *prima facie* case that additional records exist. Accordingly, the Office cannot find that KSP 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
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Assistant Attorney General

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Distributed to:

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