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26-ORD-191

May 4, 2026

In re: Erin Lewis/Nelson County Sheriff's Office

Summary: The Nelson County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act") when it did not timely respond to the Appellant's request. The Office cannot find that the Sheriff's Office violated the Act by not providing records it does not possess

Open Records Decision

On March 17, 2026, Erin Lewis ("the Appellant") submitted a records request to the Sheriff's Office seeking seven categories of records. In relevant part, the Appellant requested (1) a "video recording" dated February 25, 2020, (2) any request for records seeking the same video and the Sheriff's Office's response to those requests, and (3) any authorization from Sheriff's Office personnel authorizing that video being shared on social media. In response, on March 26, 2026, the Sheriff's Office stated that it did not possess a copy of the video, it had received no records requests for the video, and it possessed no written authorizations allowing the video to be shared on social media. This appeal followed.¹

First, the Appellant claims on appeal that the response of the Sheriff's Office was not timely under the Act. Under KRS 61.878(1), a public agency has five business days after receiving a request for records in which to issue a response either granting or denying the request. Here, the Appellant submitted her request on March 17, but the Sheriff's Office did not respond until March 26, seven business days after receiving the request. As such, the Sheriff's Office violated the Act when it failed to timely respond to the request.

¹ On appeal, the Appellant challenges only the Sheriff's Office's response to that part of her request in which she sought the video and related records. She has not challenged the responses to the other parts of her request.

Next, the Appellant asserts that the Sheriff's Office violated the Act by not producing the video and related records. But 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.

The Appellant has not attempted to make a *prima facie* case that the Sheriff's Office possesses responsive records. Simply asserting that records exist or that the video had been shared to social media² is not adequate to make a *prima facie* showing that the Sheriff's Office possesses that video. Accordingly, the Office cannot find that the Sheriff's Office violated the Act by not providing records it does not possess.³

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

² Specifically, the Appellant states that a former deputy sheriff posted the video on social media.

³ The Appellant also complains that the Sheriff's Office allowed the identified video to be shared on social media. Such a complaint is beyond the scope of the Office's review under the Act. *See* KRS 61.880(2)(a) (limiting the Office's review to "whether the agency violated provisions of KRS 61.870 to 61.884.").

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Distributed to:

Erin Lewis, Appellant

Brandon Bryan, Nelson County Deputy Sheriff

Ramon Pineiroa, Nelson County Sheriff

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