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26-ORD-195

May 5, 2026

In re: Melanie Barker/Office of the Governor

Summary: The Office of the Governor (“the Agency”) did not violate the Open Records Act (“the Act”) when it did not provide a record it does not possess.

Open Records Decision

On April 2, 2026, Melanie Barker (“Appellant”) submitted a request to the Agency for “the record (DOA-28A REV 03/2023) for [t]his Kentucky Governor Andy Beshear – Out of Country Trip to Davos (Switzerland) in 2026.” In a timely response, the Agency provided “the only responsive records in its possession.” This appeal followed.

On appeal, the Appellant states that she should have received the version of the requested record that was signed, but the Agency provided only an unsigned copy. In response, the Agency maintains that it provided the only responsive record 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* showing that the requested record exists. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* showing 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 must possess the requested record is not adequate to make a *prima facie* showing that the agency does, in fact, possess the record. *See, e.g.*, 25-ORD-209; 22-ORD-040. Rather, to make a *prima facie* showing that the agency possesses or should possess the requested record, the requester must provide a statute, regulation, or factual support for that contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. “Merely asserting that additional records exist does not establish a *prima facie* case that they do or that an agency has failed to conduct an adequate search.” 24-ORD-023; *see, e.g.*,

23-ORD-042 (finding an assertion that an employee must have sent or received emails during a specific time failed to make a *prima facie* case that emails existed but were not provided).

Here, the Appellant has not attempted to make a *prima facie* case that the Agency possesses additional responsive records. Rather, she only states that she “didn’t want a draft with no signature.” This does not make a *prima facie* case that the Agency possesses additional responsive records. Accordingly, the Agency did not violate the Act when it provided the only responsive record in its possession.

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

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Distributed to:

Melanie Barker, Appellant

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