



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

26-ORD-198

May 6, 2026

In re: Kurt Wallace/Bullitt County Attorney

Summary: The Bullitt County Attorney (“County Attorney”) violated the Open Records Act (“the Act”) by failing to respond within five business days of receiving the request as KRS 61.880(1) requires. Because the requester has made a *prima facie* showing that the County Attorney does or should possess responsive public records, she violated the Act by failing to explain the adequacy of the search she conducted.

Open Records Decision

On March 24, 2026, Kurt Wallace (“the Appellant”) submitted a request to the County Attorney for copies of “all records created, received, maintained, or relied upon by the Bullitt County Attorney’s Office, including the County Attorney, in connection with responses to Open Records Requests and related appeals before [the Office] for the period November 10, 2024, to March 23, 2026.” The Appellant limited his request to records related to nine specific Open Records Decisions¹ (“ORD”) and any ORD that was issued after 26-ORD-060.² On April 8, 2026, the County Attorney

¹ Each ORD identified concerns an appeal brought under the Act by the Appellant against a Bullitt County agency.

² The Appellant sought copies of the following: (1) “[a]ll records used to respond to [ORRs] and/or Notices of Appeal relating to” nine listed ORDs; (2) “Records of Communications,” including emails, attachments, drafts of responses, notes or memoranda, and communications with the Office; (3) “Records of Search, Review and Handling,” including “[s]earch records and methodologies,” “[f]ile inventories,” “[l]ogs of responsive records,” and “[d]ecisions to withhold or redact records”; (4) “Records of Receipt and Tracking,” including email receipts, mail logs, and internal routing or tracking records; (5) “Records Sufficient to Show Processing of Requests,” including five items of information; (6) “Delay and Compliance Tracking” records, including records “sufficient to show” the duration of delays, “internal tracking (logs, calendars, reminders, notes),” and the “[r]easons for delayed or ‘inadvertently overlooked’ responses”; (7) “Compliance Evaluation” records documenting “internal evaluation of compliance” with provisions of the Act; (8) “Appeal Handling” by the Office, including records documenting “receipt, response, or non-response to OAG appeals,” including notices of appeal, related communications, and “[i]nternal handling records”; and (9) “Responsive Record Identification” records “sufficient to show, for each responsive record,” whether it was produced, withheld, redacted, or

advised the Appellant that her office “does not keep records of [requests] or responses; therefore, there are no records in the possession of” the County Attorney responsive to your request.

Alleging “willful violations” of the Act,³ on April 8, 2026, the Appellant initiated this appeal challenging the County Attorney’s failure to issue a timely response to his March 24 request and her “categorical denial” of the request; he further noted that she did not “state that there were no emails, no responses from [the Office], or no notes. She did not say that she even searched the email records.” In support of his position that responsive records do exist in the County Attorney’s possession, the Appellant provides 266 pages of records he received in response to a similar request he had submitted to the Office.

Under KRS 61.880(1), upon receipt of a request for public records, a public agency “shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify the person making the request, within the five (5) day period of its decision.” Here, the unrefuted record on appeal confirms the Appellant submitted his request on March 26, 2026, but did not receive any response from the County Attorney until April 8, 2026, several days beyond the five business days permitted under KRS 61.880(1). The County Attorney does not dispute this fact or provide any explanation for the delayed response.⁴ Accordingly, the County Attorney violated the Act, specifically KRS 61.880(1), by failing to respond within five business days of receiving the Appellant’s request. 25-ORD-198; 25-ORD-092.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to make a *prima facie* showing that the records are within the public agency’s possession, custody, or control. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the

claimed to be nonexistent, the date on which it was first identified, the date it was produced (if applicable), and the statutory basis for any redaction or withholding.

³ The Office does not determine whether actions of a public agency such as the County Attorney are “willful.” 22-ORD-205. Rather, the circuit court is empowered to make such a finding under KRS 61.882(5). “All the Office can decide is whether the agency’s response violated the Act. KRS 61.880(2)(a).” 22-ORD-205. “The role of the Attorney General in adjudicating a dispute concerning access to public records is narrowly defined by KRS 61.880(1); this office is without authority to deviate from that statutory mandate.” 17-ORD-087; 07-ORD-112. Thus, insofar as the Appellant is raising issues beyond the Office’s purview, including claims the County Attorney has violated KRS 519.060 (“Tampering with public records”), the Office reiterates that “allegations of records tampering or concealment are not justiciable in this forum.” 17-ORD-087; 14-ORD-083; 12-ORD-050; 10-ORD-050.

⁴ On April 9, 2026, the Office sent a notice of appeal to the County Attorney, stating that a response on the agency’s behalf “must be received within five (5) days of the date of this notice.” As of today’s date, the Office has not received any response on the County Attorney’s behalf addressing the arguments made by the Appellant.

requester makes a *prima facie* showing that the agency does or should possess the records, “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). To make a *prima facie* showing that the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or factual support for that contention. *See, e.g.*, 23-ORD-207; 21-ORD-177; 11-ORD-074.

Here, the Appellant has provided copies of several categories of records the County Attorney received from the Office during the appeals that resulted in the ORDs identified by the Appellant. The Appellant has also established that the County Attorney engaged in email correspondence with him relating to requests that he submitted to her office. As such, he has made a *prima facie* showing that the County Attorney had possessed records responsive to his request. Because the Appellant has provided factual support for his contention that the County Attorney possesses—or should possess—responsive records, the burden shifts to the County Attorney to explain the adequacy of her search, which she has failed to do, both initially and on appeal. 24-ORD-161.

The Office has long recognized that a search for public records by a public agency is adequate when the agency uses methods reasonably designed to identify and locate responsive records. *See, e.g.*, 24-ORD-161; 95-ORD-096. Reasonable search methods include “reviewing the files pertaining to the general subject matter of the request, and the files of employees either specifically mentioned in the request or whose job duties are related to the subject matter of the request.” *See, e.g.*, 24-ORD-161; 19-ORD-198. To carry its burden of demonstrating that its search was adequate, the public agency must, at a minimum, specifically describe the types of files it searched or identify the employees whose files were searched. *See id.* But here, the County Attorney made no mention of the search methods she utilized in attempting to locate any existing, responsive records, stating instead that her office does not keep “records of requests or responses” without further explanation.⁵ The County Attorney did not address whether she maintains related correspondence *or* any records pertaining to *appeals* brought under the Act. The County Attorney did not describe

⁵ The Office notes that Records Series L6659 on the Local Governments General Records Retention Schedule governs the retention and disposition of “Open Records Appeals to the Office of the Attorney General,” and includes the letter of appeal, the public agency’s response, the notice of appeal from the Office, the public agency’s response to the appeal, and the decision by the Office resolving the appeal. Records Series L6659 states that local agencies must retain these records for five years before destroying them. Ultimately, the County Attorney’s management of these records falls outside the Office’s jurisdiction under KRS 61.880(2).

the files that she searched, nor did she identify which employees' files were searched. "Just as a requester cannot make a *prima facie* case that records do or should exist merely by asserting that they do, an agency cannot meet its burden merely by asserting that it searched for records." 24-ORD-161. The County Attorney has not explained whether she conducted any search of her own files or emails. "At all times the public agency carries the burden of proof in justifying its denial" under KRS 61.880(2)(c), and the County Attorney has not carried her burden here. 20-ORD-129; *see also* 25-ORD-256.

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/ Michelle D. Harrison
Michelle D. Harrison
Assistant Attorney General

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Distributed to:

Kurt Wallace, Appellant
Tammy Baker, Bullitt County Attorney