



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-205

May 12, 2026

In re: Sarah Stratton/Floyd County Sheriff's Office

Summary: The Floyd County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act") when it failed to respond to portions of a request for records. The Sheriff's Office did not violate the Act when it could not provide records it does not possess.

Open Records Decision

Sarah Stratton ("the Appellant") submitted a request to the Sheriff's Office for various "records related to an incident that occurred on March 18, 2026, between approximately 7:30-8:00 AM on US 23 in Pike County, Kentucky, involving [a] vehicle operated by" a named deputy. Specifically, she requested "[d]ash camera footage from the involved vehicle during the specified timeframe"; "GPS, AVI, or activity logs for the involved unit during the specified timeframe"; "[d]ispatch logs, call logs, or CAD records related to the vehicle or the deputy during that timeframe"; "incident reports, internal documentation, or notes generated in connection with this event"; and "[d]epartment policies or standard operating procedures regarding [s]afe following distance while operating a department vehicle," "[o]peration of county vehicles outside primary jurisdiction," and "[h]andling and documentation of citizen complaints."

In a timely response, the Sheriff's Office provided its policies and procedures for operation of county vehicles outside primary jurisdiction. The remainder of the response was in the form of notations on the request letter.¹ However, the Sheriff's Office made no notation or other response to the Appellant's request for "incident reports, internal documentation or notes generated in connection with [the] event." In response to the request for dispatch logs, call logs, or CAD records, the Sheriff's Office made a notation stating that the Appellant's spouse "can get at city." In

¹ Although making notations on the request letter is perhaps not an optimal means of responding to a request under the Act, it qualifies as a minimally sufficient written response under the Act. *See, e.g.,* 12-ORD-105; 05-ORD-077.

response to each other item of the request, the Sheriff's Office made the notation "N/A." This appeal followed.

When a public agency receives a request to inspect records, that agency must decide within five business days "whether to comply with the request" and notify the requester "of its decision." KRS 61.880(1). A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090. If the requested records exist and an exemption allows the agency to deny inspection, it must cite the exemption and explain how it applies. Conversely, if the records do not exist or the agency does not possess them, then the agency must affirmatively say so. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Sheriff's Office failed to respond to the Appellant's request for incident reports, internal documentation, or notes. On appeal, the Sheriff's Office states it "has no such documentation." Nevertheless, by initially failing to respond to that portion of the request, the Sheriff's Office violated the Act.

Regarding the Appellant's request for dispatch logs, call logs, or CAD records, the initial response of the Sheriff's Office did not state whether it possessed any such records but merely indicated they could be obtained "at city." On appeal, the Sheriff's Office explains that those records "are maintained by the city of Prestonsburg," and the Appellant "should contact them for the requested documents." A public agency "is responsible only for those records within its own custody or control." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)). When an agency "does not possess the requested record, and advise[s] the [requester] of the person it believe[s] to be the custodian of that record," it does not violate the Act. 26-ORD-136; *see also* 22-ORD-033 (finding an agency did not violate the Act when it stated it did not possess the requested records and indicated the agency it believed would possess them). Here, however, the Sheriff's Office initially failed to state whether it did or did not possess the requested records. Thus, the Sheriff's Office violated the Act when it did not fully respond to that portion of the request.

As to the remaining portions of the request, the Appellant claims the Sheriff's Office violated the Act by responding with "N/A," a common abbreviation for "not applicable" or "not available." However, the Office has recognized an agency's response of "N/A" as sufficient to "indicate[] in substance, though not by its literal words[,] that certain records [do] not exist." OAG 89-55; *see also* 22-ORD-180 n.3. Further, on appeal, the Sheriff's Office clarifies that the records in question do not exist. Once a public agency states affirmatively that no responsive records exist, the burden shifts to the requester to make a *prima facie* case that the records do exist. *See Bowling*, 172 S.W.3d at 341. A requester must provide some evidence to make a *prima facie* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record, or other factual support for

the existence of the records. *See, e.g.*, 21-ORD-177; 11-ORD-074. A requester’s bare assertion that certain records should exist is insufficient to make a *prima facie* case that the records actually do exist. *See, e.g.*, 22-ORD-040. Here, the Appellant does not attempt to make a *prima facie* case that the Sheriff’s Office possesses the requested records, but merely criticizes its lack of a written policy or procedure for handling and documenting citizen complaints.² Therefore, the Sheriff’s Office did not violate the Act with regard to the records it does not possess.

Finally, the Appellant claims the Sheriff’s Office did not properly respond to her request for “any records concerning the receipt, review, follow-up, and internal handling of [a] complaint [she] made to [the] Sheriff’s Office about that incident as a public safety concern.” However, a careful review of the documents submitted by the Appellant with her appeal does not reveal any such request. On March 30, 2026, the Appellant emailed the Sheriff’s Office to request “[c]onfirmation that [her] complaint was received,” “[c]onfirmation that the complaint is being reviewed,” “[i]nformation regarding the process for investigation of complaints against deputies,” and “[c]onfirmation that the conduct of [the deputy] and the handling of [her complaint] will both be internally reviewed.” The Act, however, does not require public agencies to respond to requests for information, but only to requests for specifically described public records. *See* KRS 61.872(2)(a) (providing an agency “may require a written application . . . describing the records to be inspected”); KRS 61.872(3)(b) (providing a person requesting copies of public records must “precisely describe[] the public records which are readily available within the public agency.” Here, the Appellant’s March 30 email did not describe any records, but merely requested “confirmation” of certain facts and “information” about the investigation process. Because the Appellant has not provided a copy of a purported request for records regarding the handling of her complaint, she has not properly invoked the jurisdiction of the Office as to that issue.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.

² The Attorney General is only authorized under KRS 61.880(2)(a) to adjudicate disputes arising under the Act. *See, e.g.*, 25-ORD-279 n.3. The nonexistence of a particular policy or procedure is not such an issue.

³ *See* KRS 61.880(2)(a) (requiring “the complaining party [to] forward to the Attorney General a copy of the written request and a copy of the written response denying inspection,” if a response was issued, to perfect an appeal).

Russell Coleman
Attorney General

/s/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

Sarah Stratton
Sheriff John P. Hunt
Keith Bartley, Esq.