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26-ORD-227

May 20, 2026

In re: Melanie Barker/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it denied a request for records that are not within its possession, custody, or control.

Open Records Decision

Melanie Barker (“Appellant”) submitted a request to the Cabinet seeking “the record of the Ending / Remaining Balance of the \$15 Million Dollars originally funded in 2022-2024 Fiscal Year.” In response, the Cabinet denied the request, stating the “administration and use of funds within the Budget Reserve Trust Fund Account are governed at the state level and are outside the purview of” the Cabinet. This appeal followed.

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)). 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 records do or should exist, then the public agency “may also be called upon to prove that its search was adequate.” *City of Fort Thomas*, 406 S.W.3d at 848 n.3 (Ky. 2013) (citing *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 a statute or regulation requiring the creation of the requested record or other factual support for the existence of the record. *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 are actually in the possession, custody, or control of the agency. *See, e.g.*, 22-ORD-040.

Here, the Appellant has not attempted to make a *prima facie* case that the Cabinet possesses the requested records. Instead, she has simply challenged the denial, with no explanation for why she thinks the denial was incorrect. Thus, the Appellant has not made a *prima facie* case that the Cabinet possesses the requested records. As a result, the Cabinet did not violate the Act when it denied a request for records that are not within its possession, custody, or control.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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:

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