



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-235

May 26, 2026

In re: Daniel Cooper/Rowan County Sheriff's Office

Summary: The Rowan County Sheriff's Office ("the Sheriff's Office") did not violate the Open Records Act ("the Act") when it denied a request for records that it does not possess or when it did not fulfill a request for information.

Open Records Decision

Inmate Daniel Cooper ("Appellant") submitted a records request to the Sheriff's Office for "any and all documents [identifying] the Rowan County Sheriff Deputy that [the Appellant's] custody was released to on" December 2, 2026, for a "transport from the Bourbon County Detention Center to the Rowan County Circuit Court" and "any and all information relating to the time that the deputy accepted custody of [the Appellant] pertaining to [him] and the incident that occur[ed] on" December 2, 2024. The Sheriff's Office denied the request because it does not "have any documentation concerning this transport." This appeal followed.

Here, initially and on appeal, the Sheriff's Office states that it does not possess responsive records. Once a public agency states affirmatively that it does not possess a requested record, the burden shifts to the requester to make a *prima facie* case that the 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 agency does or should possess the record, "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). A requester must provide some evidence to make a *prima facie* case that requested record exists, 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 actually do exist. *See, e.g.*, 22-ORD-040.

Here, the Appellant has not made a *prima facie* case that the Sheriff's Office possesses any records related to the incident described in his request. Rather, the Appellant asserts that the Sheriff's Office failed to "conduct[] an extensive research to locate the requested information in accordance with KRS 61.870(2)."¹ The Appellant did not provide any evidence to back up his assertion. As a result, the Appellant fails to make a *prima facie* case that the Sheriff's Office does or should possess any records responsive to his request. Accordingly, the Sheriff's Office did not violate the Act when it denied the Appellant's request for records that do not exist within its possession.²

Lastly, on appeal, the Appellant asserted that the Sheriff's Office violated KRS 61.872 when it failed to disclose the identity of the Sheriff's Deputy involved in the specific incident he described. The Act does not require public agencies to fulfill requests for information, but only requests for extant public records. *See* KRS 61.872(2)(a) (a request to inspect records must include a description of "the records to be inspected"). Thus, the Act did not require the Sheriff's Office to provide the requested information to the Appellant, and so the Sheriff's Office did not violate the Act when it did not do so.

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.

¹ KRS 61.870(2) defines the term "public record." It does not prescribe the requirements for an agency's search.

² On appeal, the Sheriff's Office explains that it does "not file or keep these orders . . . to transport prisoners."

Russell Coleman
Attorney General

/s/ Matthew Ray
Matthew Ray
Assistant Attorney General

#353

Distributed to:

Daniel Cooper #260940
Matt Sparks
Melody Lawson,
Shelley Lykins
Michele Jessee
Cecil Watkins