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26-ORD-251

June 2, 2026

In re: Daniel Woodie/Covington Police Department

Summary: The Covington Police Department ("the Department") did not violate the Open Records Act ("the Act") when it denied a request for public records because the requester had not provided a statement explaining that he was a resident of the Commonwealth at the time of the request. The Department did not violate the Act when it did not provide records it does not possess.

Open Records Decision

This appeal concerns two separate requests submitted by Daniel Woodie ("the Appellant") to the Department. The Office will address each separately.

On February 3, 2026, the Appellant submitted a request seeking 10 categories of records. The Appellant claimed he was a resident of the Commonwealth under KRS 61.878(10)(a), (d), and (f), and attached an undated document signed by Angie Cable, who stated she had "authorized [the Appellant] to request responsive records on [her] behalf under the Kentucky Open Records Act in accordance with KRS 61.870(10)(f)." The Department responded on February 23, 2026, granting the request in part and denying it in part. The Appellant initiated this appeal, arguing that the Department's response was untimely, the records produced were over-redacted, and not all the requested records were provided.

On appeal, the Department asserts that it could not have violated the Act in responding to this request because the Appellant had not adequately provided a statement explaining how he was a resident of the Commonwealth at the time of the request.

Under KRS 61.872(2)(a), "[a]ny resident of the Commonwealth shall have the right to inspect public records." A public agency "may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f)." *Id.* "Resident of the Commonwealth" is defined in KRS 61.870(10) as follows:

(a) An individual residing in the Commonwealth;
(b) A domestic business entity with a location in the Commonwealth;
(c) A foreign business entity registered with the Secretary of State;
(d) An individual that is employed and works at a location or locations within the Commonwealth;
(e) An individual or business entity that owns real property within the Commonwealth;
(f) Any individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection; or
(g) A news-gathering organization as defined in KRS 189.635(9)(b)1.a. to e.

Any one of these subsections is sufficient to qualify a requester as a resident of the Commonwealth for purposes of the Act. *See* 24-ORD-224. "[A]n agency's denial does not violate the Act when the record on appeal demonstrates that the requester was not a resident of the Commonwealth at the time of the request." 25-ORD-156.

A "public agency is not required to simply accept a statement of residency that it knows to be false." *Id*. The Office has previously found the Appellant is not a resident of the Commonwealth under KRS 61.878(10)(a) because he "'works from home' at a location outside Kentucky" and merely uses a post office box in Kentucky. *Id*. Further, in 25-ORD-397, the Office found the Appellant is not a resident of the Commonwealth under KRS 61.870(10)(d) on the basis of letters from his employer, which "referred to the Appellant as 'a permanent teleworker living in' a location not in Kentucky [and] stated that 'his work is primarily remote' but 'he reports to' a worksite located in Kentucky on an 'as needed' basis." Here, nothing in the record on appeal indicates that those circumstances have changed. However, it is the Agency's burden "to make a *prima facie* case that the [Appellant] is not a resident of the Commonwealth" under KRS 61.870(10)(f). 25-ORD-156.

When a requester claims to be a resident based on an authorization from another person or entity, the agency may require proof of that authorization. *See* 24-ORD-034. In this case, the Appellant's claim of residency under KRS 61.870(10)(f) is based on an undated authorization from Ms. Cable to request records on her behalf under the Act. In 26-ORD-008, the Office found this written authorization was sufficient to establish the Appellant's residency under KRS 61.870(10)(f). However,

after Ms. Cable withdrew her authorization in a January 23, 2026, letter, the Office found the Kenton County Clerk's Office did not violate the Act because a revoked authorization could not serve as the basis for a claim of residency. *See* 26-ORD-031.

In 26-ORD-081, the Office was presented with identical facts involving the Appellant and a different public agency. Because Ms. Cable had revoked her authorization, the Office determined that the agency did not violate the Act by denying the Appellant's request when he later provided an undated authorization letter from Ms. Cable. *Id.* The Office reasoned that the agency properly relied on the dated revocation letter rather than the undated authorization letter. *Id.* Further, although the Appellant subsequently provided a dated authorization letter, that dated letter did "not retroactively establish residency at the time of the request." Thus, the Office held that the agency did not violate the Act by denying the Appellant's requests on the basis of residency.

The present appeal does not present any reason for the Office to depart from its prior reasoning in 26-ORD-081. Therefore, the Office finds the Department could not have violated the Act in response to the Appellant's February 3, 2026, request because he had provided an insufficient statement of residency.

The Appellant also submitted a request to the Department on February 16, 2026. This request was accompanied by an authorization from Ms. Cable that was dated February 13, 2026. This request sought eight categories of records.[1] In response, the Department stated that it had provided him with communications with Ms. Cable, communications with the Kenton County Attorney's Office, the report and evidence gathered by the Department employee, communications between the Department and the Appellant, and communications with the Kenton County Commonwealth's Attorney's office.[2] The Department stated that it possesses no communications between its employee and the identified law firm.

This appeal followed, in which the Appellant asserts that the Department "fail[ed] to provide responsive records for the vast majority of the requested items"

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[1] Specifically, the Appellant requested: (1) communications between the Department and Ms. Cable; (2) communications between the Department and the Kenton County Attorney's Office about the Appellant; (3) the final report created by a named Department employee; (4) evidence obtained as a result of the named Department employee's investigation; (5) communications between the Department and the Appellant between 2023 and the date of this request; (6) communications between the named Department employee or other Department employees and a particular law firm; (7) other records related to the Appellant; and (8) communications between the Department and the Kenton County Commonwealth's Attorney about a private individual.

[2] The Department stated that it redacted "dates of birth, social security numbers, phone numbers, and addresses of victims and witnesses" under KRS 61.878(1)(a). The Appellant did not challenge this aspect of the Department's response to his February 16 request.

and "fail[ed] to explain why they did not provide the other requested records which were not supplied."

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 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 should or must possess the requested records is not adequate to make a *prima facie* case that the agency does, in fact, possess the records. *See, e.g.*, 22-ORD-040.

Here the Appellant has not made a *prima facie* case that the Department possesses more records than those it has already provided to the Appellant. Rather, he only asserts that not all records were produced. The Department has satisfied the Act by informing the Appellant that it has provided all records responsive to each part of his request. Accordingly, the Office cannot find that the Department violated the Act by not providing records it does not possess.

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
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Assistant Attorney General

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Distributed to:

Daniel Woodie, Appellant
Col. Justin Wietholter, Chief of Police, City of Covington
Frank Schultz, City Solicitor, City of Covington