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26-ORD-255

June 3, 2026

In re: Jennifer Tompkins/Jefferson County Board of Education

**Summary:** The Jefferson County Board of Education (“the Board”) violated the Open Records Act (“the Act”) when it failed to state that certain requested records did not exist. However, the Board did not violate the Act when it could not provide records that do not exist or grant inspection of video footage that no longer exists.

***Open Records Decision***

On April 22, 2026, Jennifer Tompkins (“the Appellant”) submitted a request to the Board for copies of certain “records related to incidents involving [her] children on March 6 and March 17, as well as any enrollment or placement decisions affecting [her] children.” Specifically, the Appellant requested “[a]ll video footage from relevant areas during the times of the incidents”; “[i]ncident reports, written statements, and staff notes”; “[i]nternal communications (including emails) referencing these incidents”; and “[d]ocumentation reflecting any review of the incidents or conclusions reached.” Regarding enrollment and placement decisions, the Appellant requested “[d]ocumentation showing who initiated, processed, or approved any transfer, placement, or assignment change involving [her] children”; “[a]ll communications (including emails) regarding decisions about [her] children’s school assignment or transfer”; “[a]ny policies, guidelines, or criteria used in making those decisions”; and “[l]ogs, records, or notes reflecting when and how the decision was made.”

In a timely response on April 29, 2026, the Board stated, “The written documentation [the Appellant] requested is attached.” Regarding the Appellant’s request for video footage, the Board advised it did “not possess video from March 6, as video is overwritten after 30 days.” The Board denied the request for a copy of the March 17 video “[p]ursuant to the Family Educational Rights and Privacy Act (‘FERPA’), the Kentucky Family Education Rights and Privacy Act (‘KFERPA’), KRS 61.878(1)(k), and KRS 61.878(1)(l),” because “student identifying information, including student images, are not subject to release without the signed written consent of the guardians of all students visible” and other students appeared in the

footage.<sup>1</sup> However, the Board made the March 17 footage available for the Appellant to view. This appeal followed.

The Appellant claims the production of records was “incomplete.” Specifically, the Appellant states the Board did not provide “documentation reflecting [her] report of the March 6 incident,” “records of [her] March 12 phone call to the school,” “records of communications made through the attendance line,” “documentation identifying who initiated or approved the transfer/placement decision,” “records showing the date and time the transfer decision was made or entered,” “prior communications” that are “reference[d]” in “[i]nternal emails,” or “documentation supporting statements that video footage was reviewed.”

In its response to this appeal, the Board states it “has submitted all responsive records to” the Appellant and therefore it “has no additional responsive documents.” More specifically, the Board asserts it “does not have any record of” the Appellant’s phone call on March 12, 2026. Regarding the reassignment of the Appellant’s children to another school, the Board states “that was automatically done when [the Appellant] moved to a different address” and “[n]o human was involved in that decision.” The Board notes “documentation relating to [its] student assignment plan,” which governs automatic reassignments, has been provided to the Appellant.

When a public agency receives a request for 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 violates KRS 61.880(1) ‘if it fails to advise the requesting party whether the’ records exist.” *Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 873 (Ky. App. 2021) (quoting 20-ORD-010). A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090. Here, the Board advised the Appellant that the video from March 6, 2026, no longer existed, but did not address the remaining categories of records that do not exist.<sup>2</sup> Therefore, the Board violated the Act.

Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to make a *prima facie* case that the records do or should exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records exist, then the agency must provide “a written explanation for their nonexistence.” *Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011) (quoting 10-ORD-078). And, if the requester has made a *prima facie* case, “the agency may also be called upon to prove

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<sup>1</sup> The Appellant does not raise any objection on appeal to this part of the Board’s response.

<sup>2</sup> A statement from a public agency that it has disclosed all responsive records is “tantamount to an affirmative statement that the remaining records requested do not exist.” 04-ORD-040. Here, however, the Board did not expressly state it had disclosed *all* responsive records.

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).

Here, the Appellant provides a phone screenshot purporting to show a call made to or from a number labeled “Jeff Co Pub Sch” on March 12, 2026. However, the fact that a phone call occurred does not prove the Board generated a record of that call. The Act does not require a public agency to “create a record.” *See, e.g.*, OAG 76-375. The Appellant further claims “[i]nternal email reference prior communications that were not included in the production.” This assertion, however, is too nonspecific to make a *prima facie* case that additional responsive records exist. Finally, the Appellant claims “responsive records were only identified and produced after [she] specifically raised their omission.” But the Appellant provides no evidence that any additional records were provided after the Board’s response on April 29, 2026. Accordingly, the Appellant has not made a *prima facie* case that the Board did not produce all responsive records. Thus, the Board did not violate the Act when it could not provide records that do not exist.

As to the deleted video footage from March 6, 2026, the Appellant does not dispute the Board’s assertion that the footage was automatically overwritten after 30 days and was therefore unavailable at the time of her request. However, she argues the video should have been preserved after she “raised concerns” about the March 6 incident. The Appellant does not claim she made a request to view the footage before it was deleted. Moreover, the Act does not “require a public agency to preserve records beyond the duration of the applicable retention schedule.” 20-ORD-067. Therefore, the Board did not violate the Act when it granted inspection of the only responsive video that existed when the Appellant made her request.

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/ James M. Herrick  
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Distributed to:

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