



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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26-ORD-261

June 4, 2026

In re: Laura Overby/Graves County Fiscal Court

Summary: The Graves County Fiscal Court (“the Fiscal Court”) did not violate the Open Records Act (“the Act”) when it provided all responsive records in its possession.

Open Records Decision

On April 28, 2026, Laura Overby (“the Appellant”) submitted a request to the Fiscal Court seeking seven categories of records related to the 2026 award of a rock/material and hauling bid.¹ In response, the Fiscal Court granted the request in part and denied it in part. Specifically, it provided records responsive to parts 1, 3, 5, and 6 of the request, and it stated that it possesses no records responsive to parts 2, 4, and 7 of the request.

The Appellant then submitted a second request seeking: (1) “documents used to evaluate, compare, or support the selection and award of the rock hauling bid”; (2) “internal communications . . . between county officials regarding the evaluation, selection, or award of the rock hauling bid”; and (3) “notes, drafts, or working documents used in preparation for the April 27, 2026 fiscal court meeting where bids were discussed or awarded.” In response, the Fiscal Court provided records

¹ Specifically, the Appellant requested: (1) “bid tabulation sheets, scoring sheets, comparison spreadsheets, or evaluation summaries used in determining the award of the contracts”; (2) internal communications regarding the bids between the Fiscal Court members, Graves County employees, or road department employees; (3) communications between Graves County employees and two private entities regarding four subject; (4) “notes, memoranda, or documentation reflecting how fuel surcharges or production-based surcharges were” treated “during the evaluation process”; (5) “meeting minutes, recordings, or transcripts” from any Fiscal Court meeting where the bids in question were “discussed, evaluated, or approved”; (6) “written policies, guidelines, or criteria used to evaluate and award the bids”; (7) “documents reflecting the basis for determining that one bid was ‘responsive’ or ‘non-responsive,’ including any internal or external legal guidance.”

responsive to parts 1 and 3 of the requested, but it stated that it does not possess records responsive to part 2 of the request. This appeal followed.

On appeal, the Fiscal Court states that “[t]here are no other records to produce.” 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 Fiscal Court possesses additional responsive records. Instead, she alleges that the Fiscal Court treated her business differently than the business that received the bid, and she also alleges that her business did satisfactory work for the Fiscal Court and so she should have received records documenting how those factors impacted the eventual bid award. However, this argument is nothing more than a bare assertion that the Fiscal Court should possess additional records. That does not make a *prima facie* case that the Fiscal Court does, in fact, possess such records. 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 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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Laura Overby, Appellant

Jesse Perry, Graves County Fiscal Court, Judge Executive

Vickie VeuCasovic, County Fiscal Court, Secretary

John Cunningham, Graves County Attorney