



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-268

June 11, 2026

In re: Kurt Wallace/Bullitt County Sheriff's Office

Summary: The Bullitt County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act") when it failed to respond to a request for public records within five business days and failed to respond to portions of the request. The Sheriff's Office did not violate the Act when it authorized the Bullitt County Attorney to respond on its behalf to a request for records or when it did not fulfill requests for information. However, the Sheriff's Office violated the Act when it claimed certain records do not exist, the requester made a *prima facie* case that such records did exist, and the Sheriff's Office did not explain the records' nonexistence or demonstrate the adequacy of its search.

Open Records Decision

On January 13, 2026, Kurt Wallace ("the Appellant") submitted an 18-part request to the Sheriff's Office by email. Because the terms of the request are essential to determining the sufficiency of the agency's response, they are set forth in detail.

In parts A1 through A8, the Appellant requested records relating to an individual named William Alex Payne ("Payne") on the specific dates of December 6, 2024; January 27, 2025; and January 28, 2025. Specifically, he sought: (A1) "records sufficient to show whether [Payne] was a paid employee/member of" the Sheriff's Office on those dates, "including appointment/commission records, personnel status records, payroll eligibility records, and any leave, suspension, or separation records"; (A2) "records sufficient to show whether [Payne] was paid for the pay periods containing [those dates], including payroll registers, earnings detail, hours paid, pay codes, and pay-period summaries"; (A3) "records sufficient to show whether public funds were used to compensate [Payne], including fund or account codes and ledger entries"; (A4) "records sufficient to identify who authorized payment for [Payne], including approval workflows and supervisor sign-off records"; (A5–A7) "records sufficient to show whether [Payne] was on duty" on those dates "and the period of

duty covered”; and (A8) “records sufficient to show any recorded meal or break period for” Payne on January 28, 2025.

In parts B1 through B5, the Appellant requested records relating to a “dispatch of Hillview Police to Troy’s Wrecker Service” on February 14, 2025. Specifically, he sought: (B1) “CAD records sufficient to identify any incident(s) . . . resulting in” such a dispatch; (B2) “CAD records sufficient to identify any separate 911 call . . . resulting in” such a dispatch; (B3) “[a]ll dispatch and/or 911 audio recordings corresponding to” such events; and (B4) “[a]ll records of communications between Hillview Police Department and [the] Sheriff’s Office concerning the events at Troy’s Wrecker Service.” In part B5, the Appellant asked the Sheriff’s Office to “identify the actual records custodian (agency and office) for those records” if the Sheriff’s Office “contends it does not maintain” them.

In part C1, the Appellant requested “[a]ll records generated, received, or used by [the Sheriff’s Office] that initiated, authorized, requested, or caused” the Appellant’s arrest on January 28, 2025, for the unauthorized practice of law, “including CAD entries, dispatch notes, call logs, emails, texts, internal messages, tasking notes, or supervisory directions.” In part C2, he requested “[a]ll records generated by any paid [Sheriff’s Office] member, including command staff, that initiated, authorized, requested, or caused” his arrest.

In part D1, the Appellant requested “records of notary activity occurring on January 28, 2025[,] in connection with any document used, generated, received, or relied upon by” the Sheriff’s Office. In part D2, he requested “records sufficient to identify any notary not employed by or assigned to [the Sheriff’s Office] who performed a notarial act on January 28, 2025[,] involving a document used, generated, or relied upon by” the Sheriff’s Office. Finally, in part D3, the Appellant asked the Sheriff’s Office to “identify the actual custodian” of “notary journals or logs,” if the Sheriff’s Office “contends it does not maintain” them, and to identify “the basis for [its] reliance on such notarized documents.”

On January 29, 2026, the Bullitt County Attorney responded on behalf of the Sheriff’s Office, stating that the “Sheriff’s Office is in possession of no records responsive to requests A1–3, B1–10 [*sic*], or C and believes that no such records exist.” The County Attorney further asserted an agency is not required “to create documents that do not already exist” or “to answer questions submitted via an Open Records Request.” This appeal followed.

When a public agency receives a request for public records, it must determine within five business days “whether to comply with the request [and] notify in writing the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1). Here, the Sheriff’s Office received the Appellant’s request on January

13, 2026, but did not respond until January 29, 2026, the eleventh business day after it received the request. Therefore, the Sheriff's Office violated the Act.

The Appellant further claims the response to his request was improper because it was issued by the Bullitt County Attorney, who is not the official custodian of records for the Sheriff's Office. However, the Act merely requires a response to be "issued by the official custodian *or under his or her authority*." KRS 61.880(1) (emphasis added). Thus, in 22-ORD-175 and 22-ORD-046, the Office found a county attorney was authorized to respond to a request for records on behalf of the county sheriff's office. *See also* 24-ORD-273 (county attorney responded on behalf of the county jail); 25-ORD-182 (city attorney responded on behalf of the city clerk); 93-ORD-134 (city attorney responded on behalf of the city's budget and finance department); 05-ORD-119 (Governor's Office responded on behalf of the Kentucky State Police). On appeal, the Open Records Clerk for the Sheriff's Office has submitted a response stating that the Bullitt County Attorney, as the "designated attorney for handling legal matters," is "authorized to handle legal matters regarding requests" and, therefore, "can respond to an open records request addressed to" the Sheriff's Office. Because the Bullitt County Attorney had authority from the official records custodian to respond to the Appellant's request, her doing so did not violate the Act.¹

Next, the Appellant asserts his request "was not fully answered." Upon comparing the request and the response, it is apparent that the Sheriff's Office did not respond at all to parts A4, A5, A6, A7, A8, D1, or D2 of the Appellant's request. Under the Act, if a requested record exists and an exception applies to allow a public agency to deny inspection, the agency must cite the exception and explain how it applies. *See* KRS 61.880(1). However, if the records do not exist, then the agency must affirmatively state they do not exist. *See, e.g.,* 22-ORD-038 (citing *Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005)). A public agency cannot simply ignore portions of a request. *See, e.g.,* 21-ORD-090. Therefore, the Sheriff's Office violated the Act when it failed to respond to seven portions of the Appellant's request.²

¹ The Appellant argues the County Attorney does not possess a "contract," a "Letter of Delegated Authority" signed by the Sheriff, or a "letter of indemnity" to respond to open records requests on behalf of the Sheriff's Office. The Act, however, requires no such documents. In any event, the County Attorney is, by statute, the attorney for the county government, including "the several county . . . officers" like the Sheriff, "concerning any county . . . business within their jurisdiction." KRS 69.210(3). The County Attorney also has statutory authority to "conduct all business touching the rights or interests of the county." KRS 69.210(1). Thus, the lack of a contract or other writing does not mean the County Attorney lacked authority to represent the Sheriff's Office.

² The Sheriff's Office not only failed to respond to these parts of the Appellant's request, but responded to *nonexistent* parts B6 through B10. When the Office sought clarification from the Bullitt County Attorney as to whether the January 29 response actually corresponded to the Appellant's request, or to some other request instead, the County Attorney did not reply.

In parts B5 and D3 of his request, the Appellant asked the Sheriff's Office to "identify" the custodian of certain records not maintained by the Sheriff's Office. As the Sheriff's Office noted in its response, the Act does not require public agencies to fulfill requests for information, but only to requests for specifically described public records. *See* KRS 61.872(2)(a) (providing an agency "may require a written application . . . describing the records to be inspected"). Thus, in responding to a request under the Act, a public agency "is not obligated to respond to questions." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (internal quotation omitted).

Here, however, further analysis is warranted because the Sheriff's Office claimed to possess no records responsive to parts B1–4 of the Appellant's request. Under KRS 61.872(4), "[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records." Thus, if the circumstances indicate the person responding to the request can reasonably be charged with knowledge of the name and location of the custodian of the records, the Office has found a violation of KRS 61.872(4) when that information was not furnished to the requester. *See, e.g.*, 26-ORD-168. But here, there are no circumstances indicating that any records relating to a "dispatch of Hillview Police to Troy's Wrecker Service" exist in the custody or control of the Sheriff's Office, or that the Sheriff's Office should know who has custody of such records. A public agency "is responsible only for those records within its own custody or control." *City of Fort Thomas*, 406 S.W.3d at 856 (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)). Therefore, the Sheriff's Office did not violate the Act when it did not answer the questions contained in parts B5 and D3 of the Appellant's request.³

As to parts A1–3, B1–4, and C1–2 of the request, the Appellant claims the Sheriff's Office "falsely" stated no responsive records exist. Once a public agency states affirmatively that records do not exist, the burden shifts to the requester to make a *prima facie* case that the records do or should exist. *See Bowling*, 172 S.W.3d at 341. If the requester is able to make a *prima facie* case that the records should 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 that its search was adequate." *City of Fort Thomas*, 406 S.W.3d at 848 n.3 (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 the existence of a statute or

³ Because the Sheriff's Office did not disclaim custody of records responsive to parts D1 and D2 of the Appellant's request, but rather, *did not respond* to those parts at all, KRS 61.872(4) is not relevant to part D3 of the request.

regulation requiring the creation of the requested record, or other factual support for the existence of the records. *See, e.g.*, 21-ORD-177; 11-ORD-074.

Here, in parts A1–3, the Appellant requested various records that would show whether William Alex Payne was employed by the Sheriff’s Office during a certain time period. More specifically, in part A2, the Appellant requested “payroll registers” as proof of whether Payne received compensation during those pay periods. Regardless of whether Payne was or was not an employee of the Sheriff’s Office, it hardly requires proof that some form of payroll registers should exist. In addition, the Appellant provides a copy of an arrest warrant issued on January 28, 2025, which refers to a criminal complaint by “[t]he Affiant, Alex Payne (BULLITT COUNTY SHERIFF DEPT.),” as well as a related KYIBRS report showing the incident was reported on December 6, 2024, by “Payne, William A.” These two documents constitute *prima facie* evidence that an individual named William Alex Payne was in some way associated with the Sheriff’s Office during the relevant time. Accordingly, the Sheriff’s Office has the burden to show that it conducted an adequate search for records responsive to parts A1–3 of the Appellant’s request and to explain the purported nonexistence of such records. As the Sheriff’s Office has not made such a showing, it violated the Act.

As to parts B1–4, the Appellant has not presented any evidence that the Hillview Police Department was dispatched to Troy’s Wrecker Service on February 14, 2025, or that the Sheriff’s Office should possess any relevant records. Because the Appellant has not made a *prima facie* case that such records exist, the Sheriff’s Office did not violate the Act in its response to parts B1–4.

In part C1, the Appellant sought “records generated, received, or used by [the Sheriff’s Office] that initiated, authorized, requested, or caused” his arrest on January 28, 2025. On appeal, the Appellant provides the arrest warrant, which indicates it was “[s]erved by . . . BULLITT COUNTY SHERIFF DEPT.” For the warrant to have been executed by the Sheriff’s Office, that document must have been “received [or] used by” the Sheriff’s Office. Thus, the Appellant has made a *prima facie* case that the Sheriff’s Office should possess some records responsive to part C1 of the request. As the Sheriff’s Office has not explained why no such records exist, and has not shown it performed an adequate search, the Sheriff’s Office violated the Act.

In part C2, the Appellant requested “records generated by any paid . . . member” of the Sheriff’s Office “that initiated, authorized, requested, or caused the arrest.” Although the Appellant provides a copy of the criminal complaint sworn by Payne, which led to the Appellant’s arrest, it has not yet been established that Payne was a “paid . . . member” of the Sheriff’s Office. In the absence of any other evidence that the Sheriff’s Office should possess records responsive to part C2, the Appellant

has not made a *prima facie* case that the Sheriff's Office violated the Act when it stated no such records exist.

In sum, the Sheriff's Office violated the Act when it failed to respond to the Appellant's request within five business days and when it did not respond to parts A4-8 and D1-2 of the request. The Sheriff's Office did not violate the Act when it responded through the Bullitt County Attorney, or when it denied parts B5 and D3 as requests for information. The Sheriff's Office violated the Act as to parts A1-3 and C1 when it did not explain the nonexistence of the requested records or demonstrate that it performed an adequate search.

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
James M. Herrick
Assistant Attorney General

#269

Distributed to:

Kurt Alan Wallace
Tammy R. Baker, Esq.
Walt Sholar, Sheriff