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26-ORD-272

June 11, 2026

In re: Kurt Wallace/Kentucky Transportation Cabinet

Summary: The Office cannot find that the Kentucky Transportation Cabinet (“the Cabinet”) violated the Open Records Act (“the Act”) because the Office is unable to resolve the factual dispute between the parties.

Open Records Decision

On May 3, 2026, Kurt Wallace (“Appellant”) submitted a 310-part request to the Cabinet for records related to the Cabinet’s Division of Driver Licensing. On May 13, 2026, claiming he had yet to receive a response from the Cabinet, the Appellant initiated this appeal.

Under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1). Here, the Appellant states that he submitted his request to the Cabinet on May 3, and that on May 13, he had yet to receive any response from the Cabinet. On appeal, the Cabinet states it received the Appellant’s request on May 4, 2026, and issued its response on May 5.¹ Thus, a factual dispute exists between the parties.

¹ The Cabinet asserts that, in its response, it denied the request because it does not possess any records responsive to the request. 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. However, here, the

The Office has regularly found that it is unable to resolve factual disputes between a requester and a public agency, such as whether a requester received a response to his request. *See, e.g.*, 23-ORD-276 (factual dispute as to whether a requester received a response to his request). Similarly, here, the Office cannot find the Cabinet violated the Act because the Office cannot resolve the factual dispute between the parties as to whether the Appellant received the Cabinet's response to his request.

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Kurt Wallace
Todd Shipp
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Appellant submitted this appeal alleging that he did not receive any response from the Cabinet at all. Thus, the content of the Cabinet's response is not ripe for review.