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26-ORD-275

June 11, 2026

In re: Travis Martin/City of Hopkinsville

Summary: The City of Hopkinsville (“the City”) did not violate the Open Records Act (“the Act”) when it did not provide records it does not possess.

Open Records Decision

On March 30, 2026, Travis Martin (“the Appellant”) submitted a request to the City seeking: (1) emails sent between a particular personal email account and any city email account between January 1 and February 4, 2026; (2) “records of phone calls [or] text messages” between a particular phone number and “City-owned phones” or “Privately owned phones used for official city business”; (3) “Call logs and text message records from the city’s cellular service provider reflecting” communications responsive to parts 1 and 2 of the request; and (4) “Any such records from the Mayor’s personal cell phone . . . to the extent the device has been used for official city business.” The Appellant specified that parts 3 and 4 of his request included billing statements provided by the cellular service providers for the city and for the mayor’s personal cell phone.

In response, the City stated that no emails between City accounts and the identified email address exist, and it provided billing statements from its service provider for the billing cycles that fall within his specified date range. Regarding the requested personal device records, the City stated that it cannot provide records that are not in its possession, “such as calls and text messages of its employees,” and further stated that the mayor “has no records on his personal cell phone relating to your request.” This appeal followed.

On appeal, the Appellant states that, although the City has explained that the mayor “has no records on his personal cell phone relating to [his] request,” he also requested “records from his cell phone carrier . . . which he did not provide.” For its part, the City maintains that “there [are] no such records on [the mayor’s] personal cell phone device[].” Once a public agency states affirmatively that it does not possess

a requested record, the burden shifts to the requester to make a *prima facie* case that the record does or should exist. *See Bowling*, 172 S.W.3d at 341. If the requester makes a *prima facie* case that the agency does or should possess the record, “then the 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 must provide some evidence to make a *prima facie* case that requested record exists, such as a statute or regulation requiring the creation of the requested record or other factual support for the existence of the record. *See, e.g.*, 21-ORD-177; 11-ORD-074. A requester’s bare assertion that certain records should exist is insufficient to make a *prima facie* case that the records actually do exist. *See, e.g.*, 22-ORD-040.

Here, the Appellant has not attempted to make a *prima facie* case that responsive records exist. Rather, he simply asserts that he should have at least received cell phone carrier records related to the mayor’s phone. This bare assertion that he should have received the record is insufficient to make a *prima facie* case that the records exist.¹ Accordingly, because the Appellant has not made a *prima facie* case that the City possesses responsive records, the Office cannot find that its response violated the Act by not providing records that it does not possess.²

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

¹ Moreover, the Appellant’s request specifically sought “[a]ny such records from the Mayor’s personal cell phone . . . to the extent the device has been used for official city business” (emphasis added). Because the City has explained that no responsive records exist on the mayor’s personal cell phone, it has made clear that the device has not been used for public business. Thus, the cell phone carrier records would not be responsive to the Appellant’s request as written.

² Because the City has explained that it does not possess any responsive records, the Office need not determine whether such records could be considered “public records” within the meaning of the Act.

#274

Distributed to:

Travis Martin, Appellant

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