



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-281

June 18, 2026

In re: Anthony Watters/Barren County Clerk

Summary: The Barren County Clerk (“the Clerk”) did not violate the Open Records Act (“the Act”) when she could not provide records that are not in her possession, custody, or control.

Open Records Decision

Anthony Watters (“the Appellant”) submitted a request to the Clerk for “[a]ll Traffic and Misdemeanor cases” involving him, “as well as dispositions of such cases in Barren Co with Judge Pendleton.” In a timely response, the Clerk stated the Appellant would “need to contact the Circuit Court Clerk’s Office” for those records. After a further contact from the Appellant, the Clerk explained, “This is not data that I have as the County Clerk.” This appeal followed.

A public agency “is responsible only for those records within its own custody or control.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)). Once a public agency states affirmatively that it does not possess the requested record, the burden shifts to the requester to make a *prima facie* case that the agency has possession, custody, or control of the record. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). A requester’s bare assertion that certain records should exist is insufficient to make a *prima facie* case that the agency actually has possession, custody, or control of the records. See, e.g., 22-ORD-040.

Here, the Appellant has apparently confused the offices of County Clerk and Circuit Court Clerk. Under Section 114 of the Kentucky Constitution, the Circuit Court Clerk is a judicial branch officer who has custody of circuit court and district court records, whereas the County Clerk is a county executive branch officer who may serve as clerk of the fiscal court under KRS 67.120(1). Thus, the Appellant has not made a *prima facie* case that the requested records are within the Clerk’s possession, custody, or control. Because the Clerk does not possess the requested court records,

and has advised the Appellant of the person she believed to be the custodian of those records,¹ the Clerk did not violate the Act. *See, e.g.*, 26-ORD-136.

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:

Mr. Anthony Watters
Mike Richardson, Esq.
Helena Birdwell, Clerk

¹ *See* KRS 61.872(4) (“If 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.”).