



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-295

July 1, 2026

In re: Jonathan White/Office of the Attorney General

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

Open Records Decision

This appeal concerns two requests Jonathan White (“Appellant”) submitted to the Office. The first sought “[a]ny communications, incident reports, text messages, emails, police reports, inquiries on individuals wearing ‘white lives matter’ shirt or ‘WLM shirt’ for months of April and May 2026 in Louisville, KY.” The second sought “any communications, incident reports, text messages, emails, police reports, [or] inquiries” related to “unknown persons recording,’ ‘louisville livestreamers,’ ‘unknown livestreamers,’ ‘first amendment auditors,’ ‘killersforchrist,’ ‘jonathan white,’ or” a specific Instagram account. The Appellant further specified that his second request included any “livestreamers” at four locations in Louisville during March, April, and May 2026.

In response to both requests, the Office stated that it “is not the custodian of records maintained by other state, local and law enforcement agencies” and provided the contact information for the records custodians of Louisville Metro Government and the Louisville Metro Police Department. Further, the Office stated that, under KRS 61.872(6), the Appellant’s requests would impose an unreasonable burden on it due to the requests’ lack of precision. The Appellant then submitted two appeals regarding the two requests.¹

¹ Because both appeals arose out of requests for similar types records, and because the Office’s responses to both requests raise the same legal issues, the Office has consolidated these two appeals. See, e.g., 22-ORD-167.

On appeal, the Office states again that “it does not possess any records responsive to the Appellant’s request” because “the Office is not responsible for routine law enforcement actives in Louisville.” 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 is able to make a *prima facie* case that the records do 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). To support a claim that the agency possesses responsive records it did not provide, the Appellant must produce some evidence that calls into doubt the adequacy of the agency’s search. *See, e.g.*, 23-ORD-259; 95-ORD-96.

Here, the Appellant has not attempted to make a *prima facie* case that the Office possesses records responsive to his request. Rather, when submitting both appeals, he stated only that he “wish[ed] to appeal this request denial.” Moreover, the Office has explained that it does not perform “routine law enforcement actives in Louisville,” thus explaining why it does not possess responsive records.² Therefore, the Office did not violate the Act when it did not provide records it does not possess.³

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.

² The Office also complied with KRS 61.872(4) by providing the Appellant with contact information of the records custodians of two public agencies who may possess records responsive to this request. *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.”).

³ Because the Office does not possess records responsive to the Appellant’s requests, it is not necessary to address its additional arguments under KRS 61.872(6).

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
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Distributed to:

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Christopher Thacker, General Counsel, Records Custodian