



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-300

July 9, 2026

In re: Chad Schmidt/City of Newport

Summary: The City of Newport (“the City”) did not violate the Open Records Act (“the Act”) when it could not provide records that are not in its possession, custody, or control.

Open Records Decision

Chad Schmidt (“the Appellant”) submitted a request to the City for “[a]ny and all paperwork/logs/documentation sent or given by the staff at Newport on the Levee shopping mall to the Newport Police Department regarding [the Appellant’s] trespassing arrest that occurred on 04/26/2025.” In response, the City stated it had “no records responsive to this request.” This appeal followed.

On appeal, the City explains “the Newport on the Levee (NOTL) security systems operates independently and did not generate any reports, paperwork or records that were provided to or retained by the Newport Police Department in connection with this matter.” The City further states, “[w]hile officers may have viewed information displayed within the system at the time, no log, report, screenshot, or other record was created, received, or maintained by the City of Newport.”

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 record is in the agency’s possession, custody, or control. *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 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*, 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 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 are in the possession, custody, or control of the agency. *See, e.g.*, 22-ORD-040.

Here, the Appellant claims the Newport Police Department should have a copy of the security log from Newport on the Levee in which the trespassing incident was recorded. As evidence, he provides video footage of his meeting with a Newport police officer on June 13, 2025, in which the Appellant claimed his trespass had been falsely reported. In the video, the officer told the Appellant his arrest was based on information provided by the director of security at Newport on the Levee, who "was able to tell" the police the Appellant's history of trespassing "off a log they have there." The officer further stated he had seen the security log at the time of the arrest and would go to Newport on the Levee that night and "see if [he could] get" a copy of the log for verification. Additionally, the Appellant provides an email from the officer on June 16, 2025, stating the officer had spoken with someone at Newport at the Levee, who "confirmed [the Appellant was] trespassed from the levee and is sending [the officer] over all the paperwork."

This evidence is insufficient to make a *prima facie* case that the City in fact possesses a copy of Newport on the Levee's security log or other paperwork. At most, the Appellant has established that a police officer told him he would attempt to get a copy of the security log and that an individual at Newport on the Levee said he was "sending . . . all the paperwork" to the police department. At no time did a representative of the City state the Newport Police Department was actually in possession of the security log or other records from Newport on the Levee. Thus, the Appellant has not made a *prima facie* case that the requested records are currently within the City's possession, custody, or control. "Simply put, the Office cannot resolve factual disputes between parties who claim [certain] records should exist and agencies that insist the records do not." 22-ORD-169. Because the City does not possess the requested records, it did not violate the Act.

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:

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