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26-ORD-436

September 28, 2026

In re: Elijah Jones/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services ("the Cabinet") did not violate the Open Records Act ("the Act") when it could not provide records it does not possess.

Open Records Decision

On August 7, 2026, Elijah Jones ("the Appellant") submitted a request to the Cabinet seeking "records related to any use of force or physical restraint involving me during any placement under the Cabinet's custody or supervision, including incident reports, restraint reports, staff and witness statements, injury reports, related medical records, photos, videos, investigations, grievances, and related communications." On August 11, 2026, the Cabinet provided some responsive records, and it identified the Justice and Public Safety Cabinet as an agency that may possess additional responsive records. The Appellant then identified a particular "record of a restraint" he was seeking. The Cabinet explained that it did not possess any additional responsive records, but it identified the agency the Appellant had been placed with as possibly possessing the records. This appeal followed.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to make a *prima facie* case that the records exist and that they are within the public 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 records, "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).

To make a *prima facie* case that the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or factual support for that contention. *See, e.g.*, 23-ORD-207; 21-ORD-177; 11-ORD-074. Here, the Appellant has not made a *prima facie* case that the Cabinet possesses any

responsive records other than those it has already provided. Thus, the Cabinet did not violate the Act when it could not grant the Appellant's request for records it does not possess.

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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