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26-ORD-445

October 2, 2026

In re: Kurt Wallace/Office of the Secretary of State

Summary: The Office of the Secretary of State ("the Agency") did not violate the Open Records Act ("the Act") when it did not provide records it does not possess.

Open Records Decision

On August 17, 2026, Kurt Wallace ("Appellant") submitted a request to the Agency seeking 13 categories of records related to the law firm of Fox, Wood, Wright & Estill, a particular request for proposal, and a civil action in the Franklin Circuit Court. In response, the Agency denied the request, stating that "no responsive records were found." This appeal followed.

On appeal, the Agency maintains that it does not possess any records responsive to the Appellant's request. 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 record does 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). A requester's bare assertion that a public agency should or must possess the requested records is not adequate to make a *prima facie* case that the agency does, in fact, possess the records. *See, e.g.*, 22-ORD-040. Rather, to make a *prima facie* case the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or other factual support for that contention. *See, e.g.*, 21-ORD-177; 11-ORD-074.

Here, the Appellant only complains that the Agency has "provided no evidence" sufficient to prove that it conducted a "diligent search" for records. However, the Agency bears no burden to prove the adequacy of its search before an appellant makes a *prima facie* case that the requested records do or should exist. The Appellant's bare

assertion that the Agency's search was inadequate does not amount to a *prima facie* case that the records do or should exist. Thus, the Agency 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:

Kurt Wallace, Appellant
Jenni Scutchfield, Secretary of State, Assistant Secretary of State
Michael Wilson, Secretary of State, Deputy General Counsel