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26-ORD-450

October 7, 2026

In re: Chad Schmidt/Newport Police Department

Summary: The Newport Police Department ("the Department") did not violate the Open Records Act ("the Act") when it did not provide an incident report it does not possess.

Open Records Decision

Chad Schmidt ("the Appellant") submitted a request to the Department seeking its "incident report of the menacing incident that occurred in the parking lot of the Newport library on 01/13/2026 at approximately 10:10 a.m." On May 28, 2026, the Department stated that, after a diligent search, it found "no incident reports regarding your name on that date."[1]

On appeal, the Appellant argues the report must exist because two officers he names responded that morning, a Campbell County call-for-service record and a library incident report document the response, and he later asked the Department to file charges and provide the report. In response, the Department maintains that it does not possess the requested report.[2]

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

[1] The May 28 response also denied a separate April 26, 2026, request concerning Newport on the Levee. This appeal only concerns the January 13, 2026, library incident.

[2] The Department further states that a county dispatch record and a library incident report do not establish a separate Department incident report, and that the Act does not require it to create a record or explain why charges were not filed.

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* showing that the agency does, in fact, possess the records. *See, e.g.*, 22-ORD-040. Rather, to make a *prima facie* showing 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.

To make a *prima facie* case that the Department does possess the incident report, the Appellant provides materials documenting the actions of Department officers. However, the exhibits do not show that the Department created or retains a responsive incident report. The call-for-service lists an Officer as having trespassed a person from the library and closes the call as "advised" and "trespassed." That notation is a Campbell County dispatch entry. It documents that Department officers responded to the scene and that the dispatcher recorded a trespass disposition. It is not a Department incident report, and it does not show that the Department created or retained such a report. A requester can make a *prima facie* case by pointing to a statute, regulation, or other factual support that the requested record exists in the agency's possession. *See, e.g.,* 21-ORD-177; 11-ORD-074. Presence at the scene, or a county CAD record, is not enough. *See* 21-ORD-118 (holding that evidence that a law enforcement officer was at a crime scene is not *prima facie* evidence that a corresponding record was created). The Appellant cites no statute or policy that requires a city police department to generate an incident report for every dispatched call or every trespass coded in a county call-for-service record. As a result, the Department did not violate the Act when it did not provide an incident report that it does not possess.[3]

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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.

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[3] The Appellant's appeal submitted to the Office asks the Office to determine why no report was created, why no charges were filed, and why no employees answered his emails. However, the Act only requires an agency to provide access to existing public records. It does not require an agency to investigate, explain a charging decision, or answer questions. *See* KRS 61.872(1). The Office, likewise, cannot order the Department to supply such information. *See* KRS 61.880(2)(a) (limiting the Office to issuing "a written decision stating whether the agency violated provisions of" the Act).

Russell Coleman
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/s/ Matthew Ray
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