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26-ORD-454

October 14, 2026

In re: Howard Froehlicher/Pendleton County School District

Summary: The Pendleton County School District ("the District") did not violate the Open Records Act ("the Act") when it did not provide records that do not exist.

Open Records Decision

On September 8, 2026, Howard Froehlicher ("the Appellant") submitted an eight-part request to the District for records related to the 2018 conveyance of a property described as "the Falmouth School Center."[1] At issue in this appeal are the Appellant's requests for "any existing District records that answer the following" questions: "What information was presented to the Board [of Education] explaining why the purchaser's interest was being assigned from New Foundations Transitional Living, Inc. to Highland Hills Holdings LLC?"; "Did the Board receive any legal opinion, title report, closing memorandum, settlement statement, correspondence, or other explanation concerning what obligations from the original purchase agreement would remain in effect after the assignment and conveyance?"; "Who represented Highland Hills Holdings LLC at the assignment and closing, and do District records identify the attorney, title company, closing agent, lender, escrow agent, or source of the $125,092.62 closing payment transmitted by Wolnitzek, Rowekamp & DeMarcus, PSC?"; "Do any District records mention Brandon Voelker in connection with this property in any capacity other than as possible Board counsel – including communications with the City of Falmouth, New Foundations, Highland Hills Holdings, a closing attorney, title party, purchaser, developer, or other participant?"; and "More broadly, is there any contemporaneous record explaining the sequence from the original disposition of the former school property, through the New Foundations agreement and payments, the assignment to Highland Hills Holdings, the $161,000 closing, and the Board's understanding that its involvement was complete after closing?"

[1] The Appellant included with his appeal a copy of a previous request to the District dated August 28, 2026. That request, however, does not appear to be directly at issue in this appeal.

In a timely response, the Board answered each of the above questions by stating it had "no responsive records within its possession, custody, or control." This appeal followed. The Appellant explains he is not asking "the District to reconstruct events from memory," but rather "challenging whether the District has conducted and adequately established a search reasonably calculated to locate the public records [he] requested."

Once a public agency states affirmatively that no responsive records exist, the burden shifts to the requester to make a *prima facie* case that the records do or should exist. *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 records do or should exist, "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). A requester must provide some evidence to make a *prima facie* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record or other factual support for the existence of the records. *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 do exist. *See, e.g.*, 22-ORD-040. Here, the Appellant has not attempted to make a *prima facie* case that any records responsive to his questions are or should be in the possession, custody, or control of the District. The District is therefore not required to prove that its search was adequate. Accordingly, the Office cannot find that the District violated 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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

Howard Froehlicher
Joe Buerkley, Superintendent
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