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26-ORD-463

October 14, 2026

In re: Vivian Miles/Finance and Administration Cabinet

Summary: The Finance and Administration Cabinet ("the Cabinet") did not violate the Open Records Act ("the Act") by denying a request for certain records it does not possess.

Open Records Decision

On September 10, 2026, Vivian Miles ("the Appellant") submitted a request to the Cabinet for three categories of records "regarding procurement transactions executed under a state master agreement, MA7581700001211 ['MA758']" from January 1, 2019, until September 10, 2026. Specifically, the Appellant requested: (1) "[a]ll Delivery Orders (DO), Purchase Orders (PO), invoices, quotes, price sheets, and Statements of Work (SOW) issued by or fulfilled for any Commonwealth agency under [MA758] (Carahsoft Technology Corp/NASPO ValuePoint Cloud Solutions) that contain procurement line items for software, licenses, subscriptions, or services developed by ShadowDragon LLC"; (2) "[a]ll procurement records, invoices, or transaction receipts under the aforementioned Master Agreement containing the specific product names, terms, or descriptions: 'ShadowDragon,' 'SocialNet,' 'Horizon,' 'Maltego Integration,' or 'OSINT (Open-Source Intelligence) software platforms" and (3) "[a]ny internal contract usage reports, spreadsheets, or audit logs maintained by the Commonwealth Office of Technology ['COT'] tracking which individual state agencies or departments made financial drawdowns or purchases from Carahsoft Technology Corp under [MA758] for these specific intelligence tools." On September 15, 2026, the Cabinet sent a timely response stating that "[a]fter a diligent search," it does not possess any responsive records. This appeal followed.

On appeal, the Appellant provides the Office with a copy of a June 21, 2017, Master Agreement Modification relating to MA758, which expires on October 15, 2026, "the very contract" regarding which the Appellant requested the records described in the request. The Appellant further states that she did not have these "contract records" when submitting her September 10 request but searched for the records upon receipt of the Cabinet's denial of that request.

On appeal, the Cabinet provides the following context regarding MA758, "a contract procured by a 'lead state,' under the auspices of the National Association of State Procurement Officials" ("NASPO"), of which Kentucky is a member[1]:

> This contract is for cloud services, software, certain subscriptions, and other technology-related services utilized by state agencies in order to perform their duties. Finance, through the Office of Procurement Services (OPS), established the Master Agreement 758 so all state agencies in Kentucky could utilize the services provided by the master agreement if they believed such services would be beneficial to their operations. Finance established the Master Agreement; however, *individual state agencies would be responsible for entering into purchase orders, delivery orders, statements of work, or similar agreements to actually procure services available under the Master Agreement*.
>
> Over the duration of the Master Agreement, some state agencies have purchased services identified on the Master Agreement, including CHFS and the Commonwealth Office of Technology (COT), as indicated by the Master Agreement Modification attached to this Appeal as Attachment 2. Once the Master Agreement Modification was established by OPS, *the agencies involved dealt directly with the vendor on all issues involving delivery orders, purchase orders, invoices, quotes, price sheets and statements of work*. To the extent any items or services were purchased [under] the Master Agreement, *all records related to such purchases would be in the possession of the agency purchasing same.* Finance would have no access to such records unless it requested the records from the agency holding possession of same.

(Emphasis added.)

Likewise, the Cabinet states regarding part 2 of the request that it "has no procurement records related to the Master Agreement, because it did not procure the contract. The original contract was procured by a 'lead state' working with NASPO. Presumedly, that lead state or NASPO, or both, would have any records related to the procurement of this contract." The Cabinet further explains that Kentucky "opted to utilize the contract entered into by another state pursuant to the collective purchasing provisions of KRS 45A.300. Finance consummated this election by creating the Master Agreement, which entitled Kentucky state agencies to purchase

[1] The Cabinet states that it "does not know the identity of the 'lead state' [that] procured the original contract with Carahsoft Technology Corp. and would presumably need to request this information from NASPO." However, the Act does not require the Cabinet to acquire this information from NASPO to comply with a request.

services on the terms and conditions established by the lead state under the original contract."

Upon receipt of this appeal, the Cabinet contacted "three agencies it thought might have records or information relevant to the request[,]" specifically, OPS, the Office of Administrative Services ("OAS"), and COT.[2] OPS conducted a search of the records contained in eMARS, which is "the state procurement, contract administration, and payment database utilized by most state agencies within the Executive Branch of state government." Following the search of eMARS, OPS advised, "This vendor and/or description for 'ShadowDragon' is not found under [MA758] for Executive Branch offices." OPS further states, "These vendors and/or descriptions for 'ShadowDragon[,]' 'SocialNet,' 'Horizon,' 'Maltego Integration,' or 'OSINT' (Open-Source Intelligence)" were also not located under MA758. Thus, OPS advises the Appellant to request such records from COT.

OAS also ran a search "looking for payments made under [MA758]" and "ran a report for Carahsoft delivery orders under this contract number that [OAS] had processed for any [Cabinet] agency and did not identify any purchase for these software platforms." Lastly, the Cabinet asked COT to conduct a search, and COT advises that it "also checked the KITS Library, and none of the software titles listed appear to have been approved as standard." In summary, "three departments of [the Cabinet], OPS, [which is] responsible for procurement and state contracts for [the Cabinet], OAS, [which is] responsible for payments owed on contracts established by [the Cabinet], and COT, the agency of state government responsible for administering the technology resources and capabilities of the Commonwealth," conducted searches of records in their possession but did not locate any responsive records. Citing *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 855 (Ky. 2013), the Cabinet argues that it has "satisfied its burden to make all reasonable efforts to locate responsive records. Further, [Cabinet] procurement and contract management personnel were without knowledge of any other state agency's use of [MA758], and therefore could not furnish the requester with any information regarding the custodian of such records," or confirm that such records exist.

When a public agency receives a request for public records, that agency must decide within five business days "whether to comply with the request" and notify the requester, in writing, "of its decision." KRS 61.880(1). If the requested records exist but a statutory exception applies to justify withholding the records, the agency must cite the statutory exception and explain how it applies to records or portions thereof being withheld. KRS 61.880(1). Conversely, if the records do not exist, then the agency must affirmatively state that such records do not exist following its diligent

[2] The Office notes that COT is not the custodian of electronic records that belong to state agencies like the Cabinet. 23-ORD-311.

search. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005).

The Cabinet "cannot afford a requester access to a record that it does not have or that does not exist, 99-ORD-98, and the agency discharges its duty under the [Act] by affirmatively so stating." 26-ORD-301; 16-ORD-246. Further, a public agency is not statutorily required to "prove a negative" to refute an unsubstantiated claim that certain records exist. *See Bowling*, 172 S.W.3d at 341; 26-ORD-301; 11-ORD-037. Once a public agency states affirmatively that certain records are not within its possession, custody, or control, as the Cabinet has done here, the burden shifts to the requester to make a *prima facie* case that the requested records are within the agency's possession, custody, or control. *See Bowling*, 172 S.W.3d at 341; 26-ORD-061. If the requester makes a *prima facie* case that the agency does or should possess the records, then the public 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); 26-ORD-233; 26-ORD-061. A requester's bare assertion that a public agency 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.*, 26-ORD-301; 25-ORD-209; 22-ORD-040. Rather, 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.*, 26-ORD-301; 21-ORD-177. "Merely asserting that additional records exist does not establish a *prima facie* case that they do or that an agency has failed to conduct an adequate search." 24-ORD 023; *see*, *e.g.*, 26-ORD-233; 23-ORD-042.

Here, the Appellant initially did not provide any facts or law to support her assumption that the Cabinet possesses responsive records; however, on appeal the Appellant provides documentation she believes justifies her assumption that the Cabinet must possess responsive records, namely, MA758. Even assuming the Appellant reasonably inferred that the Cabinet possesses at least some responsive records by virtue of the MA's existence, however, on appeal the Cabinet has rebutted the presumption that any responsive records are within its possession, custody, or control by explaining that it did not procure MA758 and, therefore, NASPO, the "lead agency," or the individual state agencies would possess any existing, responsive records. The Cabinet also documented the reasonable steps taken during its diligent search of the departments within the Cabinet where any such records would be located if they were within the Cabinet's possession, custody, or control. *See Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011) (holding that "when it is determined that an agency's records do not exist, the person requesting those records is entitled to a written explanation for their nonexistence"). Accordingly, the Office finds that the Cabinet did not violate the Act by denying the Appellant's request. And, given the scope of the Office's review under KRS 61.880(2), it cannot resolve factual disputes

between the parties, including a dispute regarding which records a public agency does or should possess.[3] *See*, *e.g.*, 26-ORD-301; 22-ORD-010.

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/ Michelle D. Harrison
Michelle D. Harrison
Assistant Attorney General

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Distributed to:

Vivian Miles, Appellant
Barbara K. Dickens, General Counsel, Finance Cabinet
Laura Sharp, Official Records Custodian, Finance Cabinet

[3] The role of the Office is not "to conduct an investigation in order to locate records whose existence or custody is in dispute," 01-ORD-36, nor is the Office "empowered to substitute its judgment for that of a public agency in deciding which records are necessary to ensure full accountability." 26-ORD-421; 18-ORD-207; 12-ORD-231; 08-ORD-206.