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26-ORD-482

October 29, 2026

In re: Tara Neff/Lancaster Police Department

Summary: The Lancaster Police Department ("the Department") violated the Open Records Act ("the Act") when it did not respond to a request to inspect records within five business days of receipt. The Department did not violate the Act when it denied a request for records it does not possess.

Open Records Decision

On June 5, 2026, Tara Neff ("the Appellant") submitted a request to the Department seeking a copy of a "mugshot photo" of herself that is saved on the personal device of the Department's chief of police. The Appellant further stated that the Department's chief of police had shown the photo to her using his personal device. In a timely response, the Department states that it possesses "no records responsive to [the Appellant's] request."

Later, on July 7, 2026, the Appellant submitted an identical request to the Department. The Department responded, stating again that it possesses no responsive records and further advising the Appellant to reach out to the particular officer who had allegedly shown her a photo on her personal device. The Appellant then resubmitted her request directly to the Department's chief of police. Upon receiving no further response from the Department, the Appellant initiated this appeal.

Under KRS 61.878(1), a public agency has five business days after receiving a request for records in which to issue a response either granting or denying the request. Here, the Department does not dispute that the Appellant did not receive a

response to the request she submitted directly to the Department's chief of police.[1] Therefore, the Department violated the Act by failing to timely respond to the Appellant's request.

On appeal, the Department maintains that it does not possess the photo requested by the Appellant. 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 simply asserts that the Department has not explained the adequacy of its search. But the Department is not required to demonstrate the adequacy of its search unless and until the Appellant makes a *prima facie* case that it does or should possess the requested record. Moreover, on appeal, the Department explains that the photo was deleted because it "did not open an investigation [and] no charges were filed" related to the photograph. As such, even though the Department has confirmed that the photograph did previously exist, it has also explained that the photograph has been deleted. Accordingly, the Office cannot find that the City violated the Act.

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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[1] Instead, the Department correctly notes that if a person chooses to submit her request by email, she must send the email "to the public agency's official custodian of public records or his or her designee at the e-mail address designated in the public agency's rules and regulations." KRS 61.872(2)(b)4. However, the Department did not deny the request on this basis; rather, it did not respond to the request at all. A public agency may not ignore a request simply because it was not directed to the agency's official records custodian. *See, e.g.*, 23-ORD-002.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
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Assistant Attorney General

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Distributed to:

Tara Neff, Appellant
Ryan Hughes, Lancaster Police Department, Police Chief
Jonathan Baker, City of Lancaster, City Attorney