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26-ORD-485

October 29, 2026

In re: Kurt Wallace /City of Hillview

Summary: The City of Hillview ("the City") did not violate the Open Records Act ("the Act") when it previously provided all responsive records that it possesses.

Open Records Decision

On August 8, 2026, Kurt Wallace ("Appellant") submitted a multipart request to the City for records related to an incident that occurred on November 20, 2024, and testimony was given on August 7, 2026. On August 14, 2026, the City notified the Appellant that "all records in the custody of the City . . . concerning this matter, as well as policies, procedures, recorded oaths, etc." have already been provided to him in response to numerous previous requests. This appeal followed.

On appeal, the City again states that "[the Appellant] has already been given all records in the custody of the City . . . concerning the referenced matter."[1] 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 makes 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 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). A requester's bare assertion that a public agency must or should 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 that the agency possesses or should possess the

[1] The City further states that continued delivery of repeated requests interspersed with directives, opinions, and arguments places an unreasonable burden on it under KRS 61.872(6).

requested records, the requester must provide a statute, regulation, or factual support for that contention. *See, e.g.,* 26-ORD-168; 21-ORD-177; 11-ORD-074.

Here, to make a *prima facie* case that the City possesses additional records, the Appellant asserts that the new testimony given on August 7, 2026, created new, previously unreleased, records. The Appellant lists numerous categories of records he believes to have been created from this testimony.[2] These assertions do not constitute a *prima facie* showing that additional, existing public records remain in the City's possession. Many of the listed items seek the creation of records, answers to interrogatories, or confirmation of an officer's contemporaneous beliefs, none of which the Act requires a public agency to generate. KRS 61.870(2); *see also* 26-ORD-113. The City has repeatedly stated that it has already provided the Appellant with all responsive that it possesses concerning the November 20, 2024, incident. The Appellant has not identified a statute, regulation, or concrete documentary source that would require the existence of additional records beyond those already provided.

The Office has generally upheld the denial of a duplicate request for records as imposing an "unreasonable burden" under KRS 61.872(6). *See, e.g.*, 05-ORD-198. "To produce [records] once entails some inconvenience to the agency; to produce them three and four times requires a level of 'patience and long-suffering' that the legislature could not have intended." OAG 92-91 (quoting OAG 77-151). An agency is not "required to satisfy the identical request a second time in the absence of some justification for resubmitting that request." 95-ORD-47. Here, the Appellant has not provided such a justification beyond restating theories already addressed in prior productions and appeals.

As a result, the Office cannot find that the City violated the Act when it provided all responsive records that exist within its possession and declined to reproduce them again.

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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[2] The Appellant listed among other things the source of the later acquired identity, records of any additional charges, reasonable articulable suspicion statements, compensation arising from the stop, and notices concerning a constitutional oath of a Kentucky Transportation Cabinet official.

Russell Coleman
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/s/ Zachary M. Zimmerer
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Assistant Attorney General

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Distributed to:

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