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26-ORD-489

October 30, 2026

In re: Jonas Tuvker/Estill County Sheriff's Department

Summary: The Estill County Sheriff's Department ("the Department") did not violate the Open Records Act ("the Act") by denying requests for certain records not within its possession, custody, or control.

Open Records Decision

On September 28, 2026, the Jonas Tuvker ("the Appellant") submitted a request to the Department seeking copies of 13 categories of public records concerning Estill County Deputy Sheriff Jason Conrad "to the extent they are not exempt from disclosure." Later that day, the Sheriff responded, advising the Appellant that his request did "not include all of the requirements" under the Act. The Sheriff did not specify the requirements to which he referred. Nevertheless, the Sheriff responded by stating that the Department does not possess any responsive records. The Appellant promptly confirmed receipt of the Department's response, questioning which requirement(s) he failed to comply with and "whether any records were withheld or redacted under a statutory exemption." The Sheriff responded that it was not his "agenc[y's] responsibility to educate individuals on how to file an open records request" and stated again that "[n]o records have been withheld or redacted."

The Appellant subsequently made a new request that generally implicated the same records, but asked "to inspect and receive copies of existing public records concerning Deputy Jason Conrad," specifically, "all citizen complaints, all administrative complaints, all internal complaints and internal investigations, all disciplinary records and actions, to the extent subject to disclosure, and any records reflecting the disposition or outcome of any such complaints or investigations" from January 1, 2020, through October 1, 2026. The Appellant further clarified that he was "requesting existing records and not asking the agency to create a new record or answer questions." For the first time, he also stated that he is a "resident of the

Commonwealth of Kentucky, and this request is not for a commercial purpose."[1] In closing, the Appellant asked the Sheriff to "identify the specific requirement you believe is missing" if his request still failed to satisfy the requirements of the Act. In response, the Sheriff again stated that the Appellant was "not requesting it correctly," but reiterated that the Department did not possess any existing, responsive records; he further stated that he would not respond to any future requests "that aren't requested properly." This appeal followed.

Upon receiving notice of this appeal from the Office, the Estill County Attorney responded on behalf of the Department, stating that the Sheriff "believes that there is no violation" of the Act because he timely responded to the Appellant's requests by stating that the Department possesses no responsive records.

A public agency such as the Department cannot be said to have violated the Act by denying a request for nonexistent records or existing records that the agency does not possess. Rather, a public agency "is responsible only for those records within its own custody or control." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)). Once a public agency states affirmatively that it does not possess the requested records, the burden shifts to the requester to make a *prima facie* case that the records are or should be in the agency's possession, custody, or control. *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 agency does or should possess the records, "then the 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). However, a requester must provide some evidence to make a *prima facie* case that the agency possesses the records at issue, such as a statute or regulation requiring the creation of the records or other factual support for that contention. *See*, *e.g.*, 26-ORD-262; 26-ORD-136; 21-ORD-177; 11-ORD-074. A requester's bare assertion that a public agency must or should possess the requested records does not

[1] Under KRS 61.872(2)(a), "Any resident of the Commonwealth shall have the right to inspect public records. . . . The official custodian may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f)." "Resident of the Commonwealth," in turn, is defined by KRS 61.870(10). *See* 26-ORD-058. Moreover, all requests to inspect public records must contain the name and signature of the person making the request. KRS 61.872(2)(a) (authorizing the official custodian to require that an application be "signed by the applicant and with his or her name printed legibly on the application"); 26-ORD-340. Under KRS 61.872(2)(b), a request made under the Act shall be delivered using any of the following methods: (1) hand-delivery; (2) mail; (3) facsimile; or (4) "Sent via e-mail 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 adopted pursuant to KRS 61.876." A public agency "shall not require the use of any particular form" under KRS 61.872(2)(c). The record on appeal is unclear as to which of these requirements the Sheriff believed the Appellant failed to satisfy; however, additional discussion is unwarranted here because the Sheriff opted to comply with KRS 61.880(1) by sending a timely, written response, notwithstanding the perceived deficiencies.

constitute a *prima facie* case that the agency does, in fact, possess the records. *See*, *e.g.*, 26-ORD-262; 22-ORD-040.

Here, the Appellant has not provided any facts or evidence to substantiate his belief that records responsive to his requests not only exist, but are in the possession, custody, or control of the Department. For this reason, the Department is not required to demonstrate the adequacy of its search for those records, nor can the Office find that the Department violated the Act by denying the Appellant's requests.

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:

Jonas Tuvker, Appellant
Chris Flynn, Estill County Sheriff
Jason Riley, Estill County Attorney