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26-ORD-493

October 30, 2026

In re: Rodney Moran/Lexington Police Department

Summary: The Lexington Police Department ("the Department") did not violate the Open Records Act ("the Act") when it denied a request for records it does not possess.

Open Records Decision

Rodney Moran ("the Appellant") submitted a request to the Department for four categories of records related to a specific case with a June 1, 2020, disposition date. The Department denied the request because it is "unable to locate" the requested records. The Department explained that this "typically occurs if the records have reached the end of their retention period under Kentucky Department for Libraries and Archives guidelines, or if a court-ordered expungement was ordered." This appeal followed.

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

To make a *prima facie* case that the Department should possess responsive records, the Appellant points to the Department's 2020 records retention schedule, which separately identifies the Property/Evidence Record File, series L4892, and states that the file is retained until three years after the final disposition of the property/evidence and then destroyed. Yet, the Appellant's request indicated that the specific case relevant to his request had a case disposition date of January 17, 2017, and a CaseJack disposition date for Evidence #0323074 of June 1, 2020, over six years ago. Moreover, the Department raised the likelihood of court-ordered expungement and its related statutory duty under KRS 431.076(6)[1] to support its assertion that no record exists. Thus, the Appellant failed to make a *prima facie* case that the Department possesses the requested records. Accordingly, the Office cannot find that the Department violated the Act when it denied a request for records that it does not possess.

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.

Russell Coleman
Attorney General

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

[1] KRS 431.076(6) states that "[a]fter the expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall delete or remove the records from their computer systems so that any official state-performed background check will indicate that the records do not exist. The court and other agencies shall reply to any inquiry that no record exists on the matter."

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Distributed to:

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