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26-ORD-499

November 3, 2026

In re: Dana Hanson/Burgin Independent School District

Summary: The Burgin Independent School District ("the District") did not violate the Open Records Act ("the Act") by providing the requester with copies of all existing, responsive records within its possession, custody, or control or by referring the requester to the agency that would possess additional, responsive records. However, the District violated the Act by failing to provide the requester with contact information for the agency to which it referred him and by failing to respond within five business days of receiving the request.

Open Records Decision

On July 22, 2026,[1] Dana Hanson ("the Appellant") made a request to the District for copies of public records for the period of May 1 to July 22, 2026, specifically, "[a]ny and all records relating to meetings, discussions, gatherings, or use of [District] property (including the Board of Education office or any school facilities) that included one or more members of the Burgin City Council."[2] On August 7, 2026, the District Superintendent responded on behalf of the District, first stating that he interpreted the Appellant's request to seek records "related to the Data

[1] 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 whether the public agency has provided all existing, responsive records within the agency's custody or control. *See*, *e.g.*, 22-ORD-010 (declining to resolve a factual dispute regarding the perceived discrepancy between the records provided and those requested); 21-ORD-163 (declining to resolve conflicting factual narratives); 26-ORD-107; 19-ORD-083; 03-ORD-61; OAG 89-81.

[2] The Appellant's request includes: (1) "Meeting agendas"; (2) "Meeting notices"; (3) "Calendars or scheduling records"; (4) "Room reservations or facility use requests"; (5) "Emails"; (6) "Text messages, to the extent they constitute public records"; (7) "Memoranda"; (8) "Notes"; (9) "Meeting minutes"; (10) "Sign-in sheets or attendance records"; (11) "Correspondence"; (12) "Invitations"; (13) "Internal communications"; (14) "Documents identifying attendees"; (15) "Audio or video recordings"; and (16) "Any other records reflecting the planning, scheduling, occurrence, or substance of such meetings." In addition, the Appellant requested that "any responsive records . . . provided by or shared with another public agency" be included.

Center." The Superintendent attached copies of responsive text messages and email communications between two City Council members and himself, and further advised that the District received a request to use the cafeteria for the City Council meeting but that request was made by telephone. The Superintendent further advised that the District agreed to allow the City to use the cafeteria to better accommodate the crowd anticipated for the meeting; however, the Assistant Principal contacted the Fire Marshal to confirm the District remained in compliance with the Fire Code, and the Superintendent also provided copies of those records. In closing, the Superintendent noted that the District does not have "records for the actual City Council meeting." This appeal followed.

Upon receiving notice of this appeal from the Office, the Superintendent responded on behalf of the District, confirming that the District "provided the records in our possession that were responsive" to the Appellant's July 22 request. Nevertheless, the Superintendent further stated that "[i]f there are specific records identified in the appeal that are responsive to the original request, are in the possession of the District, and were not previously provided, I would be happy to review those items and provide any records to which the requester is entitled." However, in the District's August 7 response, the Superintendent "attempted to identify the records being provided as well as explain records that were not in the possession of" the District and, therefore, would have to be requested from the City. The Superintendent also clarified that the District's provision of the meeting space for the City Council meeting "did not place the City's records in the possession of the District."

Upon receiving a request for public records, a public agency must determine within five business days whether to comply with the request or deny it and "shall notify in writing the person making the request, within the five (5) day period, of its decision." KRS 61.880(1). A public agency may extend the deadline for production of the records, but only if the records are "in active use, in storage or not otherwise available" and the agency provides "a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection." KRS 61.872(5).

Here, the relevant facts are not in dispute. The District does not deny receiving the Appellant's request on July 22 and inadvertently overlooking it. Nor does the District dispute it failed to respond to the Appellant's request within five business days of receiving it, as KRS 61.880(1) requires. Rather, the District confirms that it responded on August 7, or 12 business days following receipt of the Appellant's request. By failing to respond within five business days, the District violated the Act.

However, the District "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 Open Records Act by affirmatively so stating." 16-ORD-246 (citing 99-ORD-150). Further, a public agency is not statutorily required to "prove a negative" to refute an unsubstantiated claim that certain records exist. *Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005); 26-ORD-397. Once a public agency states affirmatively that certain records are not within its possession, custody, or control, the burden shifts to the requester to make a *prima facie* case that the requested records are in the agency's possession. *See Bowling*, 172 S.W.3d at 341. If the requester makes a *prima facie* case that the records are or should be within the agency's possession, custody, or control, 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 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). "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." 26-ORD-397. Rather, to make a *prima facie* case the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or factual support for that contention. 26-ORD-397.

A public agency "is responsible only for those records within its own custody or control." *City of Fort Thomas*, 406 S.W.3d at 856 (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)); *see also Dep't of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) ("The ORA does not dictate that [a] public agenc[y] must gather and supply information not regularly kept as part of its records."). Here, the Appellant has not made a *prima facie* case that the District possesses additional, responsive records beyond those it has already provided to her. Accordingly, the District is not required to prove the adequacy of its search, nor did it violate the Act by denying the Appellant's request as to records that are not within its possession, custody, or control.

Under KRS 61.872(4), "[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records." The District partially complied with KRS 61.872(4) by notifying the Appellant that it does not possess any responsive records beyond those already provided to her and referring her to the City for copies of records in the possession of that agency. But KRS 61.872(4) also requires the public agency to "furnish the name and location of the official custodian of the agency's public records." Thus, by failing to provide the Appellant with contact information for the public agency to which it directed her to submit a request for additional, responsive records, the District violated the Act.

In sum, the District did not violate the Act by providing the Appellant with copies of all existing, responsive records it possesses and referring her to the City for additional, responsive records, pursuant to KRS 61.872(4), but did violate the Act by

failing to respond within five business days of receiving the Appellant's request and failing to provide her with contact information for the City.

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:

Dana Hanson, Appellant
Chris LeMonds, Superintendent, Burgin Independent School District
Bob Clark, Chair, Burgin Independent School District Board of Education
John Smith, Administrative Director, Burgin Independent School District