COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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**26-ORD-503**

November 3, 2026

In re: Tara Neff/City of Lancaster

***Summary:*** The City of Lancaster ("the City") did not violate the Open Records Act ("the Act") when it denied a request for records it does not possess.

***Open Records Decision***

On August 24, 2026, Tara Neff ("the Appellant") submitted a request to the City seeking "the specific public records generated on Wednesday, April 15, 2026," between 1:30 p.m. and 3:00 p.m. "during a law enforcement dispatch to the Garrard County DCBS/CHFS office." In particular, the Appellant requested the "digital photograph captured by" the Lancaster Police Department's chief of police. In a timely response, the City states that it possesses "no records responsive to [the Appellant's] request." This appeal followed.

On appeal, the City 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 records 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 has not attempted to make a *prima facie* case that the records exist. Moreover, on appeal, the City 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 City 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.

**Russell Coleman**
**Attorney General**

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

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Distributed to:

Tara Neff, Appellant
Michael Gaffney, City of Lancaster, Mayor
Teresa Cheek, City of Lancaster, City Clerk
Jonathan Baker, City of Lancaster, City Attorney