



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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In re: Lynette Warner/Graves County School Board

Summary: Graves County School Board (“Board”) did not violate the Open Records Act (“the Act”) where the record requested did not exist.

Open Records Decision

The issue presented in this appeal is whether the Board violated the Act in its disposition of a January 23, 2020, request by Lynette Warner (“Appellant”) for “a copy of the End of First Quarter Report (End of Q1) for 2020 for the Graves County School District Finance Corporation.” For the reasons that follow, this Office finds no violation of the Act.

The Board replied to Appellant on January 24, 2020, “There are no responsive documents to your request.” A public agency cannot provide a requester access to a record that does not exist. *See Bowling v. Lexington-Fayette Urban County Government*, 172 S.W.3d 333, 341 (Ky. 2005) (“The unfettered possibility of fishing expeditions for hoped-for but nonexistent records would place an undue burden on public agencies.”). Once an agency affirmatively states that no responsive records exist, the burden then shifts to the requester to present a *prima facie* case that the requested records do exist. *Id.* Since Appellant has made no *prima facie* showing that an “End of First Quarter Report ... for 2020” existed prior to the end of the first quarter of 2020, this Office concludes that the Board did not violate the Act.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. 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 proceeding.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

Ms. Lynette Warner
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