



COMMONWEALTH OF KENTUCKY  
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20-ORD-037

March 9, 2020

In re: William Bell/Graves County School District

*Summary:* Graves County School District (“the District”) did not violate the Open Records Act (“the Act”) by failing to honor requests for information or to produce nonexistent records, or by requiring a county resident to inspect records before obtaining copies.

*Open Records Decision*

The question presented in this appeal is whether the District violated the Act in the disposition of two requests by William Bell (“Appellant”) dated January 21 and 31, 2020. For the reasons that follow, the Graves County School District did not violate the Act.

Appellant’s first request on January 21, 2020, posed three questions to the District:

1. In reference to [a certain structure:] When was this building declared Surplus Property, and was it advertised and sold at public auction?
2. The Mayfield City Clerks [sic] Office has verified that Payroll taxes for the first and second quarter of 2017, and the entire 2016 periods have been paid. Could you disclose the amounts and when those payments were made?
3. According to [a board member,] money in the amount of \$30,000 had been transferred to the Althelic [sic] Department [sic]

yearly.... Is there a copy of the minutes from that meeting seven years ago and is [sic] there receipts for these yearly transfers? I request copies if this in fact has occurred.

The District issued a timely response on January 22, 2020.

In response to part 1 of the request, the District observed that the request did “not identify records” and stated that “the Act does not mandate responses to interrogatory questions.” In response to part 2, the District reiterated this statement and added that the Act does not require agencies “to compile or otherwise create documents,” but “financial records containing the information requested are available for public inspection at the office of the Graves County Board of Education during normal business hours.” In response to part 3, the District stated that meeting minutes were available for inspection at the same location and “[t]here are no other responsive documents available for production.”

With regard to the “interrogatory questions,” the Act does not require public agencies to honor requests for information, but only requests for records. KRS 61.872; *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”) As to the financial records and meeting minutes, the District complied with the Act by making them available for inspection during regular business hours. KRS 61.872(3)(a).

Regarding the requested “receipts,” 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.* The District’s statement that there were no other responsive documents was “tantamount to an affirmative statement that the remaining records requested [did] not exist.” 04-ORD-040. Since Appellant has made no *prima facie* showing that the “receipts” do exist, this Office finds that the District did not violate the Act in regard to Appellant’s first request.

Appellant's second request on January 31, 2020, sought "records verifying the funding (to include the amounts of monies involved) of and for the Athletic Department with Education Appropriated funds (Federal, State and Local) for FY's 2018, 2019 and 2020." Additionally, he requested "a copy of the policy, regulations or laws governing the management and funding of the Athletic Department as amended by the Graves County Board of Education." In a timely response on February 3, 2020, the District stated that "Munis<sup>1</sup> reports and Board Policies are available for inspection at the Office of the Board of Education during normal business hours."

Although Appellant requested "a copy" of the policy in question, he did not specifically request the District mail him copies. The District complied with the Act by making the requested records available for inspection during regular business hours. KRS 61.872(3). Accordingly, the District 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 proceedings.

Daniel Cameron  
Attorney General

/s/ James M. Herrick

James M. Herrick  
Assistant Attorney General

#47

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<sup>1</sup> "Munis" is the brand name of a financial recordkeeping software. See, e.g., 16-ORD-021.

20-ORD-037

Page 4

Distributed to:

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