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21-ORD-114

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In re: Gary Dillard/Christian County Sheriff's Office

Summary: The Christian County Sheriff's Office (the "Sheriff's Office") did not violate the Open Records Act ("the Act") when it did not provide records that do not exist in its possession.

Open Records Decision

Gary Dillard ("Appellant") asked the Sheriff's Office for copies of records relating to "the brand, make, model, and serial number" of any weapons issued by the Sheriff's Office to a specific deputy during his employment. In a timely response, the Sheriff's Office informed the Appellant that it does not possess the records he seeks. Appellant initiated this appeal soon after.

On appeal, the Sheriff's Office states affirmatively that it does not have a record responsive to the Appellant's request. A public agency cannot grant a requester access to a record that does not exist. *Bowling v. Lexington Urban County Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist in the agency's possession. *Id.* This office has found that a requester's bare assertion that responsive records should exist is not sufficient to establish a *prima facie* case that such records do exist. *See, e.g.,* 20-ORD-094. However, a requester can establish a *prima facie* case that records should exist by citing to a statute, regulation, or other authority that requires the requested records to be created or maintained. *See, e.g.*, 20-ORD-038; 11-ORD-074. If the requester can make a *prima facie* case that 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).

Here, the Appellant has not made a *prima facie* case that the Sheriff's Office possesses, or should possess, the records he seeks. On appeal, the Appellant states that the deputy to whom his request relates was likely employed between 1985 and 2000.[1] Appellant further states that it is "imperative that agenc[ie]s maintain public records" and that "there is no reason [the Sheriff's Office] would not have these records." However, he presents no evidence requiring the Sheriff's Office to possess or maintain records relating to the weapon of a deputy who left employment with the Sherriff's Office approximately 21 years ago. Therefore, the Sheriff's Office did not violate the Act when it did not provide records it claims do not exist in its possession.

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/Matthew Ray
Matthew Ray
Assistant Attorney General

#164

Distributed to:

Gary Dillard #119171
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[1] The Appellant admitted that he did not know the exact dates of the deputy's employment, but he believed the deputy was employed between "1985-1900." Presumably, this a typo and the Appellant meant 2000.