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**21-ORD-196**

October 19, 2021

In re: Jim Stiles/Powell County Sheriff's Office

**Summary:** The Powell County Sheriff's Office (the "Sheriff's Office") violated the Open Records Act ("the Act") when it did not respond to a request for records. However, the Sheriff's Office did not violate the Act when it could not produce for inspection records that do not exist in its possession.

***Open Records Decision***

On August 12, 2021, Jim Stiles ("Appellant") asked the Sheriff's Office for copies of all public records related to the "accidental death" of a particular person ("the decedent"). On September 20, 2021, having received no response from the Sheriff's Office, this appeal followed.

When an agency receives a request under the Act, pursuant to KRS 61.880(1) it "shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision." If an agency denies in whole or in part the inspection of any record its response must include "a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." KRS 61.880(1). Here, the Appellant claims that the Sheriff's Office received his request on August 16.<sup>1</sup> But the Sheriff's Office issued no response until September 20, over a month later. Accordingly, the

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<sup>1</sup> The Appellant claims to possess USPS tracking information confirming receipt, but he did not attach such information to his appeal. The Sheriff's Office has not denied receiving the request on August 16.

Sheriff's Office violated the Act when it did not respond to the Appellant's request within five business days from receipt.

On appeal, the Sheriff's Office states affirmatively that it "does not have any such documents requested in regard to" the decedent's death. 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 requested records do exist in the possession of the public agency. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records do or should exist, 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).

To make his *prima facie* case that the requested records should exist, and that the Sheriff's Office should possess them, the Appellant provides a copy of the decedent's death certificate. The death certificate lists the cause of death as an opioid-related overdose. The death certificate, however, classifies the manner of death as an "accident," not a homicide. There is therefore no evidence that an investigation was opened into the decedent's cause of death, or that the Sheriff's Office was the law enforcement agency that conducted such an investigation, if one occurred. Therefore, the Appellant has not made a *prima facie* case that the Sheriff's Office should possess records relating to the decedent's death. Accordingly, the Sheriff's Office did not violate the Act when it did not produce for inspection copies of public records that 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**  
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/s/Matthew Ray  
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Distributed to:

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