



COMMONWEALTH OF KENTUCKY  
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**22-ORD-033**

February 23, 2022

In re: Chad Heath/ Hardin County Clerk's Office

**Summary:** The Hardin County Clerk's Office ("the Clerk'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***

On January 12, 2022, Chad Heath ("Appellant") requested that the Clerk's Office provide copies of the "Public Official Bond (aka: Surety, Blanket, Performance and etc.)" for two judges serving, respectively, on the Hardin Circuit and District Courts. The Clerk's Office responded that it did not possess the requested records, but believed that the records would be in the possession of the Administrative Office of the Courts. This appeal followed.

Once a public agency states affirmatively that it does not possess any 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. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant does not attempt to show that the Clerk's Office possesses the bonds in question, but merely states that he has contacted various public agencies and has been unable to obtain them. KRS 62.170(1) requires the secretary of the Finance and Administration Cabinet to secure blanket position bonds to cover "all judges, clerks, and employees of the Court of Justice[.]" Under KRS 62.200(2), such bonds "shall be filed in the office of the Secretary of State." Therefore, state law prevents the Appellant from establishing a *prima facie* case that the bonds should be in the possession of the Clerk's Office. Accordingly, the Clerk's Office 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 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
**Attorney General**

/s/ James M. Herrick

James M. Herrick  
Assistant Attorney General

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Distribution:

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