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24-ORD-132

May 31, 2024

In re: Cody Glenn/Transportation Cabinet

**Summary:** The Transportation Cabinet (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it could not provide records that do not exist.

***Open Records Decision***

On April 16, 2024, Cody Glenn (“Appellant”), a former employee of the Cabinet, requested “copies of any emails within the Department of Highways that include conversations about [the Appellant] and/or about [a] complaint [he] filed in April 2024,” including “but not limited to” four specific email addresses. The Cabinet provided responsive records to the Appellant in a timely manner. On April 19, 2024, the Appellant inquired as to whether the records provided included “ALL of the email communications cabinet wide” about the Appellant and his complaint. On April 23, 2024, the Cabinet responded affirmatively. This appeal followed.

The Appellant claims the Cabinet has “no[t] disclosed all the documents” responsive to his request. In response, the Cabinet reiterates that it has “provided the Appellant . . . with all responsive records.” Once a public agency states affirmatively that no further records exist, the burden shifts to the requester to present a *prima facie* case that additional records exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant claims to “know about the [emails] they didn’t send [him]” and states that he “want[s] all the emails [the Cabinet] ha[s] hid, and deleted.” However, the Appellant provides no evidence that additional emails exist. A requester’s bare assertion that an agency possesses requested records is insufficient to establish a *prima facie* case that the agency, in fact, possesses them. *See, e.g.*, 22-ORD-040. Rather, to present a *prima facie* case that the agency possesses or should possess the requested records, the requester must provide some statute, regulation, or factual support for his contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. As the Appellant has provided only a bare assertion, he has not presented a *prima facie* case that additional emails exist.

Because the Cabinet provided all records responsive to the Appellant's request, it did not violate the Act.

A party aggrieved by this decision may appeal it by initiating an 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 emailed to OAGAppeals@ky.gov.

**Russell Coleman**  
Attorney General

/s/ James M. Herrick  
James M. Herrick  
Assistant Attorney General

#232

Distributed to:

Mr. Cody Glenn  
Jesse W. Rowe, Esq.