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24-ORD-137

June 12, 2024

In re: Makeda Charles/Louisville Metro Police Department

**Summary:** The Louisville Metro Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it did not provide records it does not possess.

***Open Records Decision***

Makeda Charles<sup>1</sup> (“Appellant”) submitted a request for body camera footage of the Department’s “property room officers destroying [her] belongings in February of 2022.” In response, the Department explained that “[c]ivilian staff” in the Department’s “Evidence and Property Unit do not have body cameras, and therefore no responsive bodycam footage exists.” This appeal followed.

On appeal, the Department maintains it does not possess body camera footage responsive to the Appellant’s request. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does or should exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes 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).

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<sup>1</sup> The Office takes notice of its decision in 24-ORD-135 involving another appeal initiated by the Appellant. Based on the record developed in that appeal, the Office found that the Louisville Regional Airport Authority did not violate the Act when it denied a request for records because the Appellant is not a resident of the Commonwealth. The Act only gives a “resident of the Commonwealth” the statutory right to demand access to public records. KRS 61.872(2)(a). It does not, however, prohibit nonresidents from obtaining public records. Rather, “[t]he official custodian *may* require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).” *Id.* (emphasis added). Here, the Department has not challenged the Appellant’s status as a “resident of the Commonwealth.” Thus, that issue is not properly before the Office and its decision in 24-ORD-135 is not dispositive here.

Here, the Appellant attaches an email sent by an employee of the Louisville Regional Airport Authority referencing body camera footage that might contain mention of the Appellant's belongings. But this email does not constitute a *prima facie* case that the Department possesses body camera footage of "property room officers destroying [the Appellant's] belongings." Moreover, even if the Appellant had made a *prima facie* case that the Department possesses responsive body camera footage, the Department has explained that it only retains body camera footage for "the applicable retention period," which, here, was 60 days.<sup>2</sup> The Appellant's request for body camera footage came over two years after the alleged footage would have been created. Thus, the Department did not violate the Act when it did not provide records it does not possess.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

#233

Distributed to:

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<sup>2</sup> See Series L6962, Louisville Metro Retention Schedule, available at <https://kdla.ky.gov/records/RetentionSchedules/Documents/Local%20Records%20Schedules/LouisvilleMetroRecordsRetentionSchedule.pdf> (last accessed June 12, 2024).