



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-172

July 30, 2024

In re: Bradley Morris/Mayfield Police Department

**Summary:** The Mayfield Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it did not grant a request for records that do not exist.

***Open Records Decision***

Inmate Bradley Morris (“Appellant”) submitted a request to the Department for a “[c]opy of all complaints, violations, [and] reprimands pertaining to” a specific Department officer. The Department denied the Appellant’s request because “there are no records pertaining to [his] request.” This appeal followed.

Here, initially, and on appeal, the Department maintains that it does not possess any records 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).

Here, in an attempt to make a *prima facie* case that the Department does or should possess the records he seeks, the Appellant asserts that the Department must possess records responsive to his request because the specific officer has “been cited” for two different offenses. However, the Appellant does not provide any evidence that the alleged offenses occurred or caused the specific officer to be cited. The Office has previously found that a requester’s bare assertion that records exist is not enough to

establish a *prima facie* case that the requested records actually exist. *See, e.g.*, 23-ORD-335; 22-ORD-040. As a result, the Office cannot find the Department violated the act when it denied a request for records that do not exist.

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/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

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