



COMMONWEALTH OF KENTUCKY
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24-ORD-259

December 5, 2024

In re: Ryan Brock/Dry Ridge Police Department

Summary: The Dry Ridge Police Department (the “Department”) did not violate the Open Records Act (“the Act”) when it did not provide records that it does not possess.

Open Records Decision

On July 26, 2024, inmate Ryan Brock (“Appellant”) submitted a request to the Department for a copy of a police report related to a stolen iPad. On October 29, 2024, claiming to have received no response from the Department, the Appellant initiated this appeal.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “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.” However, the Office is unable to resolve factual disputes between a requester and a public agency, such as whether a requester received an agency’s response to a request. *See* 21-ORD-233 (agency claimed it issued a response but the requester claimed he did not receive it); *see also* 22-ORD-125 (agency claimed it did not receive the request); 22-ORD-100 (same); 22-ORD-051 (same); 21-ORD-163 (same).

Here, the Appellant claims he submitted his request to the Department on July 26, 2024, and that he had yet to receive a response from the Department on October 29, 2024. On appeal, the Department states that it “does not have the records in its possession” and asserts that “[t]his is the same information that was previously conveyed to” the Appellant. Accordingly, the Office cannot resolve the factual dispute between the parties about whether the Department issued a response or whether the Appellant received it, and therefore cannot find that the Department violated the Act.

On appeal, the Department states, “After a thorough search of files and records, the [it] does not have the records in its possession.” 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, the Appellant has not established a *prima facie* case that the records exist. Therefore, 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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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