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24-ORD-271

December 23, 2024

In re: *The Cincinnati Enquirer*/City of Newport

**Summary:** The City of Newport (“the City”) did not violate the Open Records Act (“the Act”) when it did not produce records it does not possess.

***Open Records Decision***

*The Cincinnati Enquirer* (“Appellant”) submitted a request to the City seeking “copies of any citations, tickets, police reports, or arrests regarding KRS 511.110” and specified responsive records include “both violations and misdemeanors.” In its initial response, the City denied the request because “the case is still pending.” The Appellant then challenged the legal basis for the City’s denial. In response, the City abandoned its original denial, stating, “Though this matter remains pending[,] here is all we have.<sup>[1]</sup> No report.” This appeal followed.

On appeal, the City affirms that “there is no report or other documentation regarding” the requested records, and “[t]his is all we have.” 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 is able to make 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 additional records exist. Therefore, the City 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

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<sup>1</sup> Because the City abandoned its denial and provided the Appellant with what it stated was all responsive records, any dispute regarding that response is now moot. *See* 40 KAR 1:030 § 6.

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

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Distributed to:

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