



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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24-ORD-274

December 23, 2024

In re: Jeffrey Gegler/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it could not provide records that were not yet within its custody or control.

Open Records Decision

On November 8, 2024, Jeffrey Gegler (“the Appellant”) submitted a request to KSP for certain records related to its investigation of an incident in which two Bowling Green Police Department officers were shot at a mental health facility on November 6, 2024. KSP responded on November 12, 2024, stating it had no responsive records “because the investigation ha[d] only just begun” and the Kentucky Incident-Based Reporting System (“KYIBRS”) report had not yet been completed. This appeal followed.

Once a public agency states affirmatively that it has no responsive records, the burden shifts to the requester to present a *prima facie* case that the agency does possess records. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). A requester’s bare assertion that an agency must possess requested records is insufficient to establish a *prima facie* case that the agency actually possesses such records. *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 that contention. *See, e.g.*, 21-ORD-177; 11-ORD-074.

Here, the Appellant provides a copy of a letter from the Bowling Green Police Department dated November 11, 2024, stating that all records relating to the incident had been sent to KSP for investigation. However, KSP explains on appeal that it did not receive the records from the Bowling Green Police Department until November 15, 2024. Thus, as of the time KSP issued its response on November 12, 2024, it did not yet possess any responsive records. Accordingly, to the extent the Appellant may have established a *prima facie* case that KSP did have responsive records in its

custody or control at that time, KSP has rebutted that presumption. Accordingly, KSP did not violate the Act when it could not provide the requested records.

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

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Distributed to:

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