



COMMONWEALTH OF KENTUCKY  
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25-ORD-001

January 2, 2025

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 it had not created.

***Open Records Decision***

On November 3, 2024, Jeffrey Gegler (“the Appellant”) submitted a request to KSP for certain records, including body worn camera footage, related to its arrest of two individuals in Carroll County on October 31, 2024. KSP timely 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 the 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 2023 news article describing KSP’s body-worn camera system and stating that some officers would be equipped with body-worn cameras. However, KSP explains on appeal that “Appellant submitted his [request] so early that KSP had not had an opportunity to generate any reports that would have been responsive” to the request. 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 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

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Distributed to:

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