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25-ORD-030

January 31, 2025

In re: Stephen Kininmonth/Louisville Metro Government

Summary: Louisville Metro Government (“Metro”) did not violate the Open Records Act (“the Act”) when it did not provide records that it does not possess. Metro also did not violate the Act when it did not grant the portion of the request seeking information without describing any public records to be inspected.

Open Records Decision

Stephen Kininmonth (“Appellant”) submitted a request to Metro seeking body-worn camera footage of all police officers involved in serving an emergency protective order on June 9, 2023. The Appellant also requested the names of all officers involved in the specified law enforcement action. In response, Metro advised that it possessed no records responsive to the Appellant’s request. This appeal followed.

On appeal, Metro maintains that it does not possess any records responsive to the Appellant’s request.¹ 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 the 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.

¹ Metro also says that the Jefferson County Sheriff’s Office, and not the Louisville Metro Police Department, was the responding law enforcement agency for the June 9, 2023, action.

Here, the Appellant provides an email from the Jefferson County Sheriff's Office ("the Sheriff") stating it is "not the primary public safety answering point for Jefferson County" and advising that the Appellant "may also want to reach out to [Metro] for any additional records they may have pertaining to this incident." However, the Appellant has only provided a copy of the Sheriff's reply. Therefore, it is not clear that the Sheriff's reference to "this incident" is a reference to the June 9, 2023, law enforcement action. Moreover, the Sheriff's email would only be *prima facie* evidence about the identity of the law enforcement agency that responded to the June 9, 2023, incident. That email is not *prima facie* evidence that Metro currently possesses body-worn camera footage from that incident. Accordingly, Metro did not violate the Act when it could not provide the requested body worn camera footage.

The remaining portion of the Appellant's request sought information, not records. The Appellant requested the names of officers involved in the June 9, 2023, incident. This request did not describe public records to be inspected, but rather, seeks information. *See, e.g.,* 23-ORD-257 (denying a request for "the full names" of correctional officers on duty at a specific time); 22-ORD-054 (denying a request asking "who ordered" a letter to be written, how much the author was paid, and "why" the letter "was circulated"). The Act does not require public agencies to answer interrogatories or fulfill requests for information. Rather, it only requires public agencies to produce public records for inspection. *See* KRS 61.872(2)(a) (requiring a request to inspect records to include, inter alia, a description of "the records to be inspected"); *Dep't of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) ("The [Act] does not dictate that public agencies must gather and supply information not regularly kept as part of its records."). Accordingly, Metro did not violate the Act when it did not identify officers involved in the specified incident.

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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