



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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25-ORD-084

March 31, 2025

In re: Vivian Miles/Kentucky State Treasury

Summary: The Kentucky State Treasury (“the Agency”) violated the Open Records Act (“the Act”) when it failed to respond to a request to inspect records within five business days of receiving it. The Agency did not violate the Act when it did not provide records it does not possess.

Open Records Decision

On February 20, 2025, Vivian Miles (“Appellant”) submitted a request to the Agency seeking “Records of payments/disbursements to” two specific individuals “or any escrow firm” related to a specific civil case. Having received no response to her request by March 3, 2025, 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.” Here, the Appellant submitted her requests to the Agency on February 20, 2025, but had not received a response as of March 3, 2025, the seventh business day following submission of the requests. The Agency does not claim it responded within five business days of receiving the request. Accordingly, the Agency violated the Act.

On appeal, the Agency maintains that it does not possess any records responsive to the Appellant’s request. 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 disbursement records exist. Moreover, the Agency explains that the case related to the Appellant’s request was dismissed by the court. Therefore, the Agency states that no payments or disbursements associated with that case exist. Thus, the Agency did not violate the Act when it did not provide records it does not possess.¹

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:

Vivian Miles

Beverly K. Stoner, Administrative Branch Manager, Kentucky State Treasury
Sam P. Burchett, General Counsel and Special Assistant, Executive Staff, Kentucky State Treasury

¹ The Agency argues that this appeal should be dismissed as withdrawn given the Appellant’s subsequent email to it stating, “Thank you for the explanation, if there are ‘no records’ then there are no records.” That email was not directed to the Office and does not clearly state that the Appellant is withdrawing this appeal. Moreover, the Appellant sent additional emails complaining about the Agency’s failure to timely respond to her request. Accordingly, the Office declines to consider the Appellant’s email to the Agency as a request to withdraw her appeal.