



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-092

April 3, 2025

In re: Kurt Wallace/Bullitt County Attorney's Office

Summary: The Bullitt County Attorney's Office ("the Agency") violated the Open Records Act ("the Act") when it failed to respond to a request for records within five business days. The Agency did not violate the Act when it stated that it had no responsive records and the requester did not present a *prima facie* case that any such records existed.

Open Records Decision

On February 11, 2025, Kurt Wallace ("the Appellant") submitted a request to the Agency for a variety of financial records.¹ The Appellant also limited his request to records from January 1, 2024, to the date of the request. Having received no response from the Agency by March 10, 2025, the Appellant initiated this appeal.

Under KRS 61.878(1), a public agency has five business days after receiving a request for records in which to issue a response either granting or denying the request. Here, the Agency admits it failed to respond within that time because the request was "inadvertently overlooked." Therefore, although its omission was unintentional, the Agency violated the Act by failing to timely respond to the Appellant's request.

¹ Specifically, the Appellant requested (1) "[r]ecord of the County Attorney percentages of the judgements collected and paid into the State Treasury;" (2) "[r]ecord of the recipients in the County Attorney's Office who received the percentages of the judgement collected and paid into the State Treasury"; (3) "record identifying the recipient of said funds at the STATE TREASURY"; (4) "record identifying the STATE TREASURY as located in Washington DC"; (5) "record showing the legal name of the STATE TREASURY receiving said funds"; (6) "record showing that the STATE TREASURY is the Kentucky Commonwealth Treasury"; (7) "records showing that the funds were not co-mingled between STATE TREASURY and COMMONWEALTH OF KENTUCKY"; (8) "records showing the location of the STATE TREASURY"; (9) "record showing the fiduciary of the STATE TREASURY both who sent the funds and who received the funds"; and (10) "record showing the COMMONWEALTH OF KENTUCKY Treasury is not distinct and separate from Kentucky Commonwealth Treasury."

On appeal, regarding the sixth and eighth parts of the request, the Agency states it “has possession of no such documents” but the records “may be obtained by contacting the Kentucky State Treasurer’s Office.” Regarding the remaining portions of the request, the Agency states it “has possession of no such documents and believes that no such documents exist.” Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to make a *prima facie* case that the records do exist and that they are within the agency’s possession, custody, or control. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that the records do or should exist, “then the 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). 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.*, 23-ORD-207; 21-ORD-177; 11-ORD-074. Here, the Appellant has not attempted to make a *prima facie* case that the Agency possesses any of the requested records. Accordingly, the Agency did not violate the Act when it could not fulfill the Appellant’s request.

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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Distribution:

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