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Office of the Attorney General

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21-ORD-092

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In re: Christopher Wiest/City of Williamstown

Summary: The City of Williamstown ("City") violated the Open Records Act ("the Act") when it denied in fully a request for records that it claimed was unduly burdensome because it was able to provide some records responsive to the request.

Open Records Decision

On March 15, 2021, Christopher Wiest ("Appellant") asked the City to provide copies of "any documents . . . that relate or reference the [City's] ability to regulate or enact regulations on Lake Williamstown, including those areas outside of the city limits, including any filings or pleadings in any court case." That same day, the City responded and asked for an extension of time to respond because the "information requested will go as far back as the 1950s." The Appellant did not object to the requested extension. Then, on April 19, the City issued its final response in which it denied the request in full. As grounds for its decision, the City stated that the Appellant's request "asks for records of a general nature regulating Lake Williamstown [that] would go back to the first discussion of building a new lake in 1954. This request is too generic and would require the City Clerk's Office to manually go through literally every record over the past 67 years in hopes of meeting its burden." This appeal followed.

A public agency may deny a request for records that places "an unreasonable burden" on it. KRS 61.872(6). However, a public agency must prove that the request places an unreasonable burden upon it by clear and convincing evidence. *Id*. In 96-ORD-069, this Office found that a public agency carried its burden to demonstrate that a request for all occupational licensing forms filed by sole proprietors in Fayette County placed an unreasonable

burden on the agency. That was because the County did not organize its occupational licensing forms according to whether the applicant was a corporation, partnership, or sole proprietorship. Thus, to comply with the request, the County would have been required to manually review over 50,000 occupational licensing forms that had been submitted over a four year period to determine which of those forms had been filed by a sole proprietorship.

Here, like in 96-ORD-069, the City would have to manually review all of its records since 1954 to determine whether each record "relates to" the City's ability to regulate Lake Williamstown. The City further acknowledges the possibility that some records may have been destroyed, given that more than 60 years have passed since the lake was created. This Office finds that the City has met its burden that reviewing every record in the City's possession for a reference to the City's ability to regulate the lake would place an unreasonable burden on the City.

Despite the unreasonable burden of the request, the City has nevertheless located some responsive records. For example, in its response denying the request, the City referred to an agreement "concerning the operation of Lake Williamstown" that it had entered into with the Department of Fish and Wildlife "on February 15, 1957." Yet the City did not provide a copy of this agreement, which presumably it was able to reference to provide the specific date on which it was executed. Moreover, on appeal, the City refers to litigation about the lake, including multiple court cases. But there is no suggestion that the City has provided copies of these records to the Appellant, for which the Appellant had specifically asked. It may be true that the Appellant's request is one seeking information, rather than records, and that the request places an unreasonable burden on the City.[1] But if the City was able to locate records that are responsive to the request, then it should have provided them to the Appellant. Its failure to do so violated the Act.

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[1] On appeal, the City claims that the Appellant's request is one seeking information rather than records. The Act "does not dictate that public agencies must gather and supply information not regularly kept as part of its records." *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013). This Office has stated that a public agency is not, under the Act, required to answer a request for information. *See, e.g.*, 21-ORD-075; 16-ORD-236; 05-ORD-230; OAG 76-375. The Appellant has not requested specific public records, such as ordinances related to the lake, meeting minutes of City Council meetings, or other similar records. His request appears to be a request for information. Nevertheless, the City has found at least some records that it believes are responsive to the request. The City should have provided those records, and then explained why it would be too burdensome to identify other records, if any.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. 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.

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Distributed to:

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