



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**22-ORD-191**

September 22, 2022

In re: Gerald Kemper/City of Owenton

**Summary:** Under the facts of this appeal and 22-ORD-048, the City of Owenton (“the City”) did not violate the Open Records Act (“the Act”) when it denied a request under KRS 61.872(6) because it has sustained that denial by clear and convincing evidence that repeated requests were intended to disrupt the essential functions of the City.

***Open Records Decision***

On August 18, 2022, Gerald Kemper (“Appellant”) requested to inspect “the original records” or “a certified copy” of the City’s code of ordinances. In a timely response, the City stated that it was not possible for the Appellant to inspect the ordinances because they were in the possession of a third party for purposes of digitizing the records and making them available on the City’s website. This appeal followed.

Under KRS 61.872(6), if a request for records “places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.” This is not the Appellant’s first request for access to the City’s ordinances. In 22-ORD-048, this Office found that the City had sustained its refusal to provide the Appellant a copy of its code of ordinances under KRS 61.872(6) where the ordinances were in the possession of the third party for digitization, the Appellant was aware of that fact, and the Appellant exhibited a pattern of making extensive requests to the City for records and failing to pick them up.

On appeal, the City has produced a letter dated July 30, 2022, in which the City's counsel informed the Appellant that the digitization process would not be complete for "another 60-90 days," but that the City would assist him if he needed "any particular Ordinance." In spite of this notification, the Appellant made a repeated request for the entire code of ordinances less than three weeks later. Given the extensive history between the parties as recounted in 22-ORD-048, this Office's prior decision in that matter, and the Appellant's repeated request under identical circumstances, this Office finds that the City has met its burden of sustaining its denial by clear and convincing evidence.<sup>1</sup> Thus, the City did not violate the Act.

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 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 e-mailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
Attorney General

s/James M. Herrick  
James M. Herrick  
Assistant Attorney General

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Distributed to:

Gerald T. Kemper, Esq.  
Mitzy L. Ford, Esq.  
Ms. Sherry Hamilton  
Hon. Adam Gaines

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<sup>1</sup> Despite having sustained its denial, the City has made a good-faith effort to fulfill the Appellant's request by providing to him on September 7, 2022, at no charge, a codification of its ordinances numbered 1 to 618 as well as a copy of ordinances 619 to 773, which the City requested from the third party currently in possession of the ordinances. Although it is not clear whether these amount to all of the City's ordinances, the City states that they constitute "everything the City has at its disposal at the present time." The City further advised that the digitization process should conclude in October of 2022 and its ordinances will be available to the public on its website. Thus, under the facts presented, the City has not withheld its ordinances in violation of the Act. However, the City cannot continue to rely on its digitization process indefinitely to deny requests for copies of its ordinances.