COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

25-OMD-305

October 3, 2025

In re: Leslie Foley/London City Council

Summary: The London City Council ("the Council") did not violate the Open Meetings Act ("the Act") by holding a meeting at a location that was inconvenient to the public, by restricting recording of its meeting, by conducting a meeting not open to the public, or by conditioning the ability to publicly comment at the meeting.

Open Meetings Decision

On September 19, 2025, Leslie Foley ("Appellant") submitted a complaint to the City of London's mayor in which she described nine alleged violations of the Act stemming from the Council's September 2, 2025, meeting.[1] Specifically, the Appellant asserts that (1) the Council's meeting was held in a location without adequate space in violation of KRS 61.840, (2) the hearing officer presiding over the meeting improperly overruled an objection by the mayor's counsel, (3) the Council improperly directed that the meeting not be recorded in violation of KRS 61.840, (4) a member of the Council violated KRS 61.810 by texting a private citizen during the meeting, (5) the hearing officer was biased against one party, (6) a member of the Council based her vote regarding the mayor's removal on personal experience, (7) the Council has not been transparent regarding payment of costs for its legal counsel, (8) the Council required that citizens provide their name and address as a condition to being able to give public comment, and (9) the Council committed an "Abuse of Public Funds" by paying the hearing officer's invoice.[2] In a timely response, the Council responded to each of the Appellant's complaints explaining that it did not violate the Act. This appeal followed.

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1 That subject of the meeting was the removal of the City of London's mayor.

2 The Appellant proposed individual remedies for each part of her complaint.

Under the Act, when a public agency conducts a meeting, it is required to "provide meeting room conditions, including adequate space, seating, and acoustics, which insofar as is feasible allow effective public observation of the public meeting." KRS 61.840. According to the Appellant, "[d]ozens of citizens were either turned away or forced into overflow rooms in another building" rather than being allowed into the primary hearing room. The Appellant further states that the meeting could have been held at the "nearby Community Center." For its part, the Council explains that it provided overflow facilities "that streamed the proceedings live."

The Supreme Court of Kentucky has held that the Act "does not impose upon government agencies the requirement to conduct business only in the *most* convenient locations at the *most* convenient times." *Knox Cnty. v. Hammons*, 129 S.W.3d 839, 845 (Ky. 2004) (emphasis in original). In *Hammons*, the Court considered whether a meeting of a public agency violated KRS 61.840 "because it did not allow 'effective public observation' of the proceedings." *Id.* at 844. Describing the meeting in question, the Court stated, "It is undisputed that numerous citizens were not able to enter the crowded district courtroom and observed the proceedings from the hallways." *Id.* However, the Court ultimately held the agency had not violated KRS 61.840 because "there is nothing on the record to indicate that persons wishing to attend or participate in the proceeding were effectively prevented from doing so." *Id.* at 845. In so holding, the Court held the Act is "designed to prevent government bodies from conducting its business at such inconvenient times or locations as to effectively render public knowledge or participation impossible, not to require such agencies to seek out the most convenient time or location." *Id.*

Here, the Appellant alleges the available seating in the meeting room had been exhausted and the Council's provision of an overflow room where the meeting could be viewed remotely was insufficient to remedy the deficiency. However, the Council's August 15 meeting was analogous to the meeting at issue in *Hammons*, insofar as citizens at both meetings "were not able to enter the crowded [room]."[3] *Id.* at 844. In *Hammons*, the Court reasoned that, although the meeting room in question "might not have been the most convenient . . . location to hold the meeting, it certainly was not an inconvenient . . . location. *The fact that a large number of citizens did attend proves this point*." *Id.* at 845 (emphasis added). Similarly, here, although the Council's meeting room may not have been the most convenient location, the fact that a large number of citizens were able to attend the meeting demonstrates that it was not an

[3] To the extent the Council here provided an overflow room from which citizens could view a livestream of the meeting, it appears the public had a greater ability to view the proceedings at issue here than did the citizens in *Hammons*.

inconvenient location. Moreover, the Office has previously found that a public agency does not violate KRS 61.840 when it arranges for an overflow crowd to view its meeting from another room. *See, e.g.*, 98-OMD-44; 94-OMD-87.

At bottom, the record before the Office does not indicate that the Council's meeting location was so inconvenient "as to effectively render public knowledge or participation impossible." Rather, it is not apparent that anyone was unable to at view the meeting, either in the meeting room or in the overflow room provided by the Council. Accordingly, the Office cannot find that the Council's September 2, 2025, meeting violated KRS 61.840.

Next, the Appellant alleges that citizens were instructed to stand in the back of the room if they wished to record the meeting. As support for this claim, the Appellant provides a Facebook comment in which a different individual claims she was told to stand in the back of the room if she wished to record the meeting. Under KRS 61.840, "[n]o condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency," and "agencies shall permit news media coverage, including but not limited to recording and broadcasting."

In response, the Council denies either forbidding the recording of the meeting or requiring those who wished to do so to stand in a particular area. Rather, the Council states that "directives were given . . . that there was not to be any restrictions on attendance or recording." The Council also states that no issues related to recording the meeting were raised at the time.

Ultimately, the parties disagree regarding whether the Council imposed restrictions on recording the meeting. It is true that the Office has consistently recognized its inability to resolve competing factual claims about events that may or may not have transpired. *See, e.g.*, 25-OMD-110; 23-OMD-103; 00-OMD-169. But here, the Appellant only offers as support for her claim a third party's unsupported allegation made in a Facebook comment. The Council, on the other hand, has denied restricting the ability of citizens to record the meeting and instead states that it expressly instructed that no such restrictions on recordings be put in place. The second-hand reporting of a third-party's social media statement is not evidence that the Act was violated, especially when the violation is expressly denied by the agency. Accordingly, the Office cannot find that the Council violated the Act by restricting citizens' ability to record the meeting in violation of KRS 61.840.

Next, the Appellant alleges that the Council violated KRS 61.810 when one of its members texted with a private citizen during the meeting. Under KRS 61.810(1), "[a]ll meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times." KRS 61.810(1). Thus, a single meeting without a quorum of the members of the agency present is not a "public meeting" subject to the requirements of the Act. *See* 25-OMD-261. The Appellant alleges that a single member of the Council was texting a private citizen. That conversation did not include a quorum of the Council's members. Accordingly, the alleged text conversations were not a "meeting" subject to KRS 61.810(1).[4]

Next, the Appellant alleges that the Council requires citizens to provide their names and addresses as a condition of speaking at the meeting. The purpose of the Act is to ensure the formation of public policy "shall not be conducted in secret." KRS 61.800. It is for this reason that "[n]o condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency." KRS 61.840. The Office has previously noted that KRS 61.840 "vests the public with a virtually unconditional right to attend all meetings of a public agency." 00-OMD-169. However, the Act only provides a right for the public to *attend* meetings, not a right to *speak or participate in* the proceedings. *See, e.g.*, 95-OMD-99. Thus, while a public agency may not require a member of the public to sign a roster or otherwise identify himself or herself to attend a meeting, the agency may impose such conditions before allowing a member of the public to speak at the meeting. *See, e.g.*, 24-OMD-083; 19-OMD-135; 11-OMD-020. Here, the Appellant contends only that the Council required attendees to provide their names and mailing addresses prior to speaking at the meeting. Such a requirement does not violate the Act.

Finally, the Appellant alleges the hearing officer improperly overruled an objection during the meeting and was biased against particular parties. The Appellant also alleges that a member of the Council stated she was basing her vote on "personal experience" rather than the record created at the meeting. Further, the Appellant alleges the Council committed an "Abuse of Public Funds" by paying the

[4] The Office notes that it has expressed doubt previously that written conversations between members of a public agency could ever constitute a "meeting" subject to KRS 61.810(1). *See, e.g.*, 23-OMD-103; 23-OMD-112.

hearing officer's invoice. Regarding each of these complaints, with one exception, the Appellant does not identify any particular statute she believes was violated.[5]

The scope of the Office's review of an appeal brought under the Act is set out in KRS 61.846(2). The Office shall review a complaint and denial submitted to the Office and issue a written decision within 10 business days of receipt of the required materials. *Id.* A decision issued by the Office shall "state[ ] whether the agency violated the provision of KRS 61.805 to 61.850." *Id.* Adhering to this statutory limitation, the Office has historically declined to determine whether an agency violated statutory provisions outside the Act. *See, e.g.*, 20-OMD-126 n.1 (finding the "Office is only authorized to determine whether the [Agency] complied with the Act"); 02-OMD-22 (declining to determine whether a university's board of regents complied with its own bylaws); 95-OMD-99 (finding the Office "cannot decide whether other statutes and various local procedures and regulations have been violated").

Here, the Office lacks jurisdiction to determine whether the Council complied with KRS 83A.040(9), a statute outside the Act. Likewise, the Office lacks jurisdiction to adjudicate the Appellant's remaining complaints, which do not describe violations of the Act. Thus, the Office also cannot find violations of the Act based on those complaints. *See, e.g.*, 25-OMD-261 (declining to find a violation of the Act where the Appellant's allegation did not relate to any requirement of the Act.) The Office is without jurisdiction over the Appellant's complaints regarding KRS 83A.040(9), the hearing officer's alleged bias, the Council member's reasoning behind her vote, or the hearing officer's invoice.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.846(4)(a). 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.

[5] Regarding the hearing officer's overruling of an objection, the Appellant alleges KRS 83A.040(9) was violated.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Leslie Foley
Kelly Green, Presiding Chair, London City Council
Conrad Cessna Esq., Counsel, London City Council