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25-ORD-140

May 28, 2025

In re: Brian Garner/City of Union

Summary: The City of Union (“the City”) violated the Open Records Act (“the Act”) when it failed to respond to all parts of the Appellant’s request within five business days and when it failed to cite the specific exception authorizing its redaction of responsive records. The City also violated the Act when it initially failed to conduct an adequate search for records.

Open Records Decision

Brian Garner (“Appellant”) submitted two requests to the City on March 19 and 26, 2025, seeking: (1) communications “exchanged between the mayor, commissioners, city staff, legal counsel, or any third parties” related to the “selection, nomination, discussion, or appointment of” any commissioner; (2) “meeting minutes, agendas, notes, applications, interview summaries, or memos that reference the appointment of a city commissioner” at the February 19 and 25 meetings of the city commissioners; (3) “phone logs, calendar entries, or scheduling requests” between city commissioners, legal counsel, and the mayor from February 1 to 28, 2025; and (4) records related to the process or criteria for the appointment of any city commissioner.

In response to the March 19, 2025, request, the City stated that it did not possess any responsive correspondence, notes, interview summaries, or memos, stated that correspondence with legal counsel is exempt, and provided all other responsive records. In that same response, the City also stated that it would “reach out to [the] Mayor and Commissioners to request phone logs.” In response to the March 26 request, the City provided responsive records. Following his review of the requested phone logs, the Appellant informed the City that he believed they were incomplete due to discrepancies between the Commissioners’ logs. Now, alleging the

City has failed to provide all responsive phone logs responsive to his March 19 and 26 requests, the Appellant initiated this appeal.

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.” KRS 61.880(1). If an agency denies in whole or in part the inspection of any record, its response must include “a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.*

First, when responding to the Appellant’s March 19 request, the City did not grant or deny the Appellant’s request for phone logs within five business days of receiving the Appellant’s request. Instead, it stated that it would “reach out to [the] Mayor and Commissioners to request phone logs.” Although a public agency may delay access to responsive records beyond five business days if such records are “in active use, storage, or not otherwise available,” KRS 61.872(5), the City did not do so here. Accordingly, the City violated the Act when it failed to grant or deny the Appellant’s March 19 request for phone logs within five business days.

On appeal, the City states that, after its original production of documents responding to the March 19 and 26 requests, “two additional pages of phone records were provided to the City Clerk” and then provided to the Appellant. When a subsequent search reveals additional records not previously found, the agency’s initial search “was clearly insufficient to locate all responsive records.” 21-ORD-242; 21-ORD-178. Therefore, with regard to the “additional pages of phone records,” the City violated the Act by its initial failure to perform an adequate search.

Finally, as evidence that the City has not provided all phone log entries responsive to his request, the Appellant provides the phone logs he did receive, which he says do not align with one another. Specifically, he identifies occasions when one commissioner’s phone log shows an outgoing or incoming call with another commissioner that does not appear on the other commissioner’s phone log. In response, the City states that it “is possible that one of the commissioners may have redacted a call from their respective phone log for a myriad of reasons.”

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KRS 61.880(1). Here, the phone logs provided by the Appellant have been heavily redacted. However, the City has not cited any exemptions authorizing the redactions, either in its original response or on appeal. Instead, the City explains that “several of the commissioners are personal friends” and “[p]erhaps the call was personal in nature and not city business.” If that is the case, the City must cite the exemption authorizing that redaction and explain its application to the redacted records. It cannot simply provide partially redacted records with no explanation for the redactions. Accordingly, the City violated the Act when it redacted responsive records without citing any specific exception authorizing those redactions.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:

Brian Garner
Tammy Wilhoite, City Clerk
Jeff Otis, Esq.

¹ On appeal, the City further explains that its commissioners use their personal cell phones to conduct city business, and so the City does not possess the commissioners’ records. Thus, the City explains it relied on the commissioners to provide records responsive to the Appellant’s request. The Office has previously noted that in such situations, an official records custodian may only request that a state or local officer who possesses responsive records conduct his or her own search for responsive records. *See, e.g.*, 25-ORD-101 n.4; 24-ORD-118. But even in such circumstances, the public agency must still comply with KRS 61.880(1) by granting or denying the request within five business days, citing any exemptions that authorized any denial or redaction of responsive records, and explaining how those exemptions applied to the records.