



COMMONWEALTH OF KENTUCKY  
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**25-ORD-191**

July 23, 2025

In re: Howard Froehlicher/City of Falmouth

**Summary:** The City of Falmouth (“the City”) did not violate the Open Records Act (“the Act”) when it could not provide records that do not exist.

***Open Records Decision***

Howard Froehlicher (“the Appellant”) submitted a five-part request to the City for records related to fire hydrants. Specifically, the Appellant requested (1) “[a] list of all fire hydrants replaced or repaired . . . from January 1, 2014, to present,” (2) “[a]ll associated costs of each hydrant replacement project,” (3) “[a]ny assessments, reports, or evaluations discussing the water pressure or flow rate capabilities of the city’s water system or specific hydrant zones from 2014 to present,” (4) “[i]nternal correspondence, memos, or meeting minutes from city council or public works” that discuss “[i]ssues with low water pressure or inadequate fire flow,” “[h]ydrant replacement policies,” or “[d]ecisions to replace hydrants without addressing underlying pipe infrastructure,” and (5) “[a]ny engineering or contractor evaluations or recommendations” that relate to “[s]ystem-wide water pressure issues,” “[p]ipe size, condition, or required upgrades to improve fire flow,” or “[r]ecommendations concerning the effectiveness of replacing hydrants without addressing the water main system.”

In a timely response, the City provided a “2024 Hydrant Flushing Report” and a list of hydrants replaced since 2024, noting that the list “includes the street location date of replacement, and reason for replacement.” Regarding the second part of the request, the City stated that the list of hydrants replaced does not include “cost information[,] as the city does not track these details separately for hydrant replacements.” Regarding the third part of the request, the City asserted that no assessments, reports, or evaluations existed because none had been commissioned. Regarding the fourth part of the request, the City stated that it had “no records of discussions” on the topics identified and “does not have a formal hydrant replacement policy.” Regarding the fifth part of the request, the City asserted that “[n]o

engineering or contractor evaluations exist” on the topics identified. This appeal followed.

On appeal, the City reaffirms that it has provided all responsive records in its possession to the Appellant. Once a public agency states affirmatively that no further records exist, the burden shifts to the requester to make a *prima facie* case that additional records do exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). A requester’s bare assertion that an agency possesses additional responsive records is insufficient to make a *prima facie* case that the agency does, in fact, possesses them. *See, e.g.*, 22-ORD-040. Rather, to make a *prima facie* case that the agency possesses additional records, the requester must provide some statute, regulation, or factual support for this contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. Here, the Appellant claims he has “obtained documentation from another source” that proves additional records exist in the form of an “independent hydrant condition report,” which includes a “list of inoperable hydrants with street locations, manufacturers, and installation years,” “PSI pressure readings listed for operational hydrants,” and a “chart indicating detailed assessments of hydrant conditions – the kind of data that only results from formal evaluations or maintenance reviews.” However, the Appellant has not provided this alleged independent report or explained from what source he obtained it. The City, for its part, denies any knowledge of such a report, “as it is not a City record.” Because the Appellant offers merely the bare assertion that the City possesses additional responsive records, he has not established a *prima facie* case to that effect. Accordingly, the City did not violate the Act.

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](mailto:OAGAppeals@ky.gov).

**Russell Coleman**  
Attorney General

/s/ James M. Herrick  
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Assistant Attorney General

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Distributed to:

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