



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-ORD-209

August 4, 2025

In re: Howard Froelicher/City of Falmouth

Summary: The Office cannot find that the City of Falmouth (“the City”) violated the Open Records Act (“the Act”), when it could not provide records that it does not possess.

Open Records Decision

Howard Froelicher (“Appellant”) submitted a request to the City seeking four categories of records related to the resignation of its former mayor: (1) “[a]ll meeting minutes, resolutions, and/or official correspondence” in April, 2025; (2) “[a]ny documentation, ordinance, or internal legal opinion authorizing the appointment of a new mayor or acting mayor”; (3) “[a]ny communication, decision, or legal basis cited by the City . . . for not holding a special election to fill the unexpired mayoral term”; and (4) “[a]ny public notices, meeting agendas, or published materials discussing or authorizing major financial or legal decisions” from April 7 to June 8, 2025. The City granted the request and provided “the only documents that exist regarding the resignation of [its] former Mayor along with minutes appointing the new mayor.” This appeal followed.

Initially and on appeal the City maintains that it does not possess any additional responsive records beyond those already provided to the Appellant. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make a *prima facie* case that the requested record does or should exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records do or should exist, then the public agency “may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). To support a claim that the agency possesses responsive records it did not provide, the Appellant must produce some

evidence that calls into doubt the adequacy of the agency's search. *See, e.g.*, 23-ORD-259; 95-ORD-96.

On appeal, the Appellant asserts that “a special election is required under the following circumstances,” citing Section 152 of the Kentucky Constitution. Assuming the Appellant's assertion is true,¹ the Appellant has only made a *prima facie* case that a special election is required, but he has not made a *prima facie* case that the requested records exist or that the City is in possession of them. Accordingly, the Office cannot find that the City violated the Act when it could not provide records that it does not possess.

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Howard Froelicher
Ramona Williams
Steve Doan

¹ The Office's review is limited to determining “whether the agency violated provisions of KRS 61.870 to 61.884.” KRS 61.880(2)(b). Accordingly, the Office declines to address whether Ky. Const. § 152 required an appointment or an election.