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25-ORD-214

August 8, 2025

In re: Jacob Garmon/City of Edmonton

Summary: The City of Edmonton ("the City") did not violate the Open Records Act ("the Act") when it did not provide records it does not possess or when it timely provided all records responsive to a request. The City violated the Act when its initial response failed to explain its denial of two requests but, on appeal, it adequately explained that it denied the two requests because they did not precisely describe the records sought. Finally, the Office lacks jurisdiction to consider the portions of the Appellant's complaint that do not comply with KRS 61.880(2)(a).

Open Records Decision

Between April 2 and May 13, 2025, the Appellant submitted 19 requests for records to the City. Dissatisfied with the City's responses, the Appellant initiated this appeal.

If a person seeks the Office's review of a public agency's response to a request to inspect records, then he must proceed under KRS 61.880. When reviewing a dispute under KRS 61.880, this Office sits as an administrative adjudicative body. Under Kentucky law, administrative bodies are creatures of statute and their proceedings are provided as a matter of legislative grace. *See, e.g.*, *Kenton Cnty. Bd. of Adjustment v. Meitzen*, 607 S.W.3d 586, 594 (Ky. 2020) (holding administrative appeals are statutory proceedings that require strict compliance with the enabling statutes). Thus, when a person seeks this Office's review under KRS 61.880, he must strictly comply with that statute. *See, e.g.*, 22-ORD-078 (dismissing an appeal that failed to comply with KRS 61.880).

Under KRS 61.880(2)(a), "[i]f a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection." An appeal that does not comply with KRS 61.880(2)(a) shall be dismissed. 40 KAR 1:030 § 1 ("The Attorney General shall not consider a complaint that fails to conform to . . . KRS 61.880(2), requiring the submission of a written request to the public agency and the public agency's written denial, if the agency provided a denial.").

Here, the Appellant has challenged the City's responses to his 19 requests. However, the Appellant has only provided complete copies of both his request and the City's response for some of those requests. Thus, before addressing the merits of the Appellant's appeal, the Office must assure itself of its jurisdiction regarding each of the Appellant's complaints.[1]

Starting with request 1, the Appellant did not provide a copy of his request and only provided a portion of the City's response. Accordingly, the Office dismisses the appeal as to this request.

Regarding requests 2, 3, and 14, the Appellant provided copies of the requests, but did not provide a copy of the City's response. Although the Appellant did provide emails that he said contain the City's responses, the Appellant did not provide the attachments containing the actual responses. Accordingly, the Office dismisses the appeal as to these requests.

Regarding requests 4 through 12, the Appellant provided a copy of each request. However, the Appellant provided an incomplete copy of the City's combined response to these requests. It is apparent that portions of the City's response were omitted by the Appellant's attachments. The Office has previously held that only a "complete copy" of an agency's response is sufficient to comply with KRS 61.880(2)(a). *See, e.g.*, 23-ORD-125 n.1 (finding that one part of the Appellant's request was unperfected because "portions of [the agency's] response appear to be missing"). Accordingly, the Office dismisses the appeal as related to these requests.

[1] On appeal, the Appellant numbered each of his requests 1 to 19 and provided the date the request was submitted, a brief description of the request, and a brief description of the City's alleged violation. Herein, the Office utilizes the numbers the Appellant assigned to each of his requests.

Finally, regarding requests 16, 18, and 19, it is not apparent which documents provided by the Appellant are the "requests" he purports to challenge.[2] Request 16 appears to refer to a portion of the Appellant's response to the City's denial of requests 4 through 12. But only a portion of that email was provided. Request 18 appears to refer to the City's production of a record responsive to request 17. And request 19 was labeled by the Appellant as "Final follow-ups and preservation requests" but it is unclear which, if any, document provided by the Appellant is request 19. It is similarly difficult to determine which, if any, provided documents are the City's response to requests 16, 18, and 19. As such, the Office can only conclude that the Appellant has not complied with KRS 61.880(2)(a). Accordingly, the Office dismisses the appeal as related to these requests.[3]

Thus, the only portions of the Appellant's appeal over which the Office has jurisdiction are requests 13, 15, and 17. The Office will address each in turn.

Request 13 sought "written, electronic, and recorded communications" between a specified individual and "any representative, official, or employee" of the City "during the month of September 2008." The Appellant specified that responsive records include "emails," "texts," "letters or written correspondence," "voicemails or phone call records," "meeting invitations or calendar entries," or "memos or internal notes referencing" the specified individual. In response, the City advised that "no documents exist that would satisfy this request."

Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to make a *prima facie* case that the records do exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't,* 172 S.W.3d 333, 341 (Ky. 2005). A requester must provide some evidence to support a *prima face* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested records, or other factual support for the existence of the records. *See, e.g.,* 21-ORD-177; 11-ORD-074. 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

[2] The Office notes that the Appellant has provided hundreds of pages of documents as part of this appeal, many of which appear to be only tangentially related to the City's alleged violations of the Act. Moreover, some of the dates the Appellant provided when identifying requests 1 through 19 in his appeal letter do not align with the actual dates of his request, further complicating the Office's review.

[3] In a sur-reply submitted by the Appellant, he appears to acknowledge that requests 16 and 18 are not truly requests. However, the numbers used to identify the challenged requests in the Appellant's sur-reply do not align with those used in his appeal letter. As such, it is unclear to which portions of the appeal the Appellant is referring.

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 make a *prima facie* case, the Appellant states that the City eventually provided him with a copy of an interlocal agreement signed by the specified individual.[4] However, an interlocal agreement would not be responsive to the Appellant's request for various types of communications. Accordingly, the Appellant has not made a *prima facie* case that records responsive to request 13 exist and the City did not violate the Act by not providing records it does not possess.

Next, request 15 sought any documentation that was "signed, authorized, or approved" by a specific individual. The Appellant specified that this request seeks a December 2, 2008, interlocal agreement to which the City was a party. The request was submitted after business hours on May 9, 2025. In response, the City provided an unsigned copy of the interlocal agreement on May 16 and a signed copy of the interlocal agreement on May 17. The Appellant appears to allege that the City's response was untimely.

A public agency must decide whether to grant or deny the request and notify the requester of its decision within five business days after receiving a request to inspect records. KRS 61.880(1). Here, the Appellant's request was emailed after business hours on May 9, 2025. Therefore, it was not received by the City until the following business day, on May 12, 2025. *See, e.g.*, 21-ORD-113. As such, the City's response was due on May 19, 2025. Here, the parties do not dispute that that all responsive records were provided on May 17, before the City's May 19 deadline. Accordingly, the City timely responded to request 15.

Last, request 17 has several parts.[5] The first sought "copies of correspondence between the Edmonton city government and the Kentucky Infrastructure Authority" ("KIA") related to "infrastructure projects, funding, grant applications, and development assistance." The City denied the request, stating it was "overbroad" and "unduly burdensome," and invited the Appellant to narrow his request with dates. The second part sought all "ordinances, proclamations, executive orders, contracts, checks, resolutions, or other documents requiring mayoral signature." The City also

[4] That document was provided in response to request 15.

[5] Request 17 included three parts, but the Appellant only complied with KRS 61.880(2)(a) regarding two of them. Thus, the Office confines its analysis to the two parts of request 17 for which the Appellant has complied with the Act.

denied this part as "overbroad" and "unduly burdensome" and invited the Appellant to identify a specific record he seeks.

When a public agency denies inspection of public records, it 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." KRS 61.880(1). Here, the City stated only that the request was overbroad and unduly burdensome, but without citing to any provision of the Act. As such, its initial response violated the Act.

A request to inspect public records must describe those records in a manner "adequate for a reasonable person to ascertain the nature and scope of [the] request." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008). If the request is for copies of public records, it must "precisely describe[ ] the public records which are readily available within the public agency." KRS 61.872(3)(b). A description is precise "if it describes the records in definite, specific, and unequivocal terms." 98-ORD-17 (internal quotation omitted). This standard may not be met when a request does not "describe records by type, origin, county, or any identifier other than relation to a subject." 20-ORD-017 (quoting 13-ORD-077). Requests for any and all records "related to a broad and ill-defined topic" generally fail to precisely describe the records. 22-ORD-182

The Appellant's requests for communications between the City and KIA fails to precisely describe the records sought. The Appellant's request seeks 37 years[6] of communications related to the broad subject of "infrastructure projects, funding, grant applications, and development assistance." This request fails to describe the records sought in a manner adequate for a reasonable person to ascertain the nature and scope of the request. Accordingly, the City did not violate the Act when it denied the Appellant's request.

Similarly, the Appellant's request for records signed by the City's mayor fails to precisely describe the records sought. The Appellant has sought nearly 200 years of records,[7] limited only by the specification that they have been signed by the City's mayor. This request fails to describe the records sought in a manner adequate for a

[6] KIA has existed since 1988. *See* "KIA Loan Programs" *available at* https://kia.ky.gov/FinancialAssistance/Pages/default.aspx (last visited Aug. 7, 2025).

[7] According to the Kentucky Secretary of State, the City was first established in 1836 and incorporated in 1860. *See* Kentucky cities database *available at* https://web.sos.ky.gov/land/cities.aspx (last visited Aug. 7, 2025).

reasonable person to ascertain the nature and scope of the request. Accordingly, the City did not violate the Act when it denied the Appellant's request.

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
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Distributed to:

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