



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-332

October 21, 2025

In re: NBC News/City of Maysville

Summary: The City of Maysville (“the City”) violated the Open Records Act (“the Act”) when it failed to state that it did not possess a requested record and when it failed to explain how an exemption under KRS 61.878(1) applied to the record withheld. The City did not violate the Act when it denied a request for records pertaining to a prospective location of a business or industry under KRS 61.878(1)(d).

Open Records Decision

On September 1, 2025, NBC News (“the Appellant”) submitted a request to the City for certain “records related to the unnamed billion dollar data center project proposed in Mason County/Maysville.” Specifically, the Appellant requested “Non-Disclosure Agreements (NDAs) or confidentiality agreements signed by city officials, staff, local residents or consultants regarding this project” and “[w]ater and energy usage assessments prepared by or provided to the city for this project.” In a timely response, the City denied the request under KRS 61.878(1)(d) because it sought “[p]ublic records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business’ or industry’s interest in locating in, relocating within or expanding within the Commonwealth.” This appeal followed.

On appeal, the City states it “does not have water and energy usage assessments for any proposed data center.” When a public agency receives a request under the Act, it must “determine . . . whether to comply with the request” and notify the requester “of its decision.” KRS 61.880(1). Here, the City denied the Appellant’s request but did not disclose the fact that it had no records responsive to the request for water and energy usage assessments. A public agency violates KRS 61.880(1) “if it fails to advise the requesting party whether the records exist.” *Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 873 (Ky. App. 2021) (quoting 20-ORD-010). Therefore, the City violated the Act when it failed to advise the Appellant that the requested usage assessments did not exist.

As to the requested nondisclosure agreements, the City cited KRS 61.878(1)(d), but gave no explanation beyond quoting the language of that subsection. An agency citing an exception under KRS 61.878(1) must give “a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). The agency’s explanation must “provide particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013); *see also City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848–49 (Ky. 2013) (noting the agency’s “proof may and often will include an outline, catalogue, or index of responsive records and an affidavit by a qualified person describing the contents of withheld records and explaining why they were withheld”). Here, in denying the Appellant’s request, the City merely recited the text of KRS 61.878(1)(d) without explaining how it applied to the specific records requested. An agency response that does “little more than recite the language of [the] exception” does not meet the requirements of KRS 61.880(1). 22-ORD-204; 19-ORD-191; 05-ORD-179. Therefore, the City’s initial response violated the Act.

KRS 61.878(1)(d) exempts from disclosure “[p]ublic records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business’ or industry’s interest in locating in, relocating within or expanding within the Commonwealth.” On appeal, the City claims the specific business considering Mason County as a location for a data center has not publicly disclosed its interest in locating there. According to the City, there have “been limited disclosures” by other public agencies¹ “about the intent of the unnamed company in potentially developing a data center in Mason County, Kentucky, and outside of the geographical limits of the City of Maysville,” which were “informal statements made in response to public comments about the proposed project, but “[t]here have been no official announcements.” The City explains that “[o]ne of the primary reasons for any NDA [is] to keep the identity of the proposed developer confidential,” and “[a]lthough some details of the proposed project have been made public, the *identity* of the parties has remained confidential” (emphasis in original).

In 25-ORD-265, the Office affirmed the nondisclosure of records pertaining to the prospective location of a data center, including “agreements submitted by or on behalf of the data center developer(s),” where the industrial prospect had not committed to a location or made any public disclosure of its interest in locating within the Commonwealth and the identity of the business had not been publicly disclosed. Here, as in 25-ORD-265, the public agencies’ “limited disclosures that an unidentified

¹ Specifically, the Appellant has cited certain statements made by the Maysville-Mason County Industrial Development Authority and the Mason County Judge/Executive, which do not disclose the identity of the industrial prospect.

business is considering Mason County as a possible location for a data center do not preclude KRS 61.878(1)(d) from applying" to the requested records. *Id.*

The Appellant argues that the City could provide the requested records but redact the name of the business entity from the records. However, KRS 61.878(1)(d) does not merely exempt the identity of the business from disclosure. It exempts the records themselves from disclosure in the absence of a public disclosure of the business's interest in locating within the Commonwealth. Therefore, the City did not violate the Act when it denied the Appellant's request for nondisclosure agreements pertaining to the potential location in Mason County of a previously undisclosed business or industrial prospect.

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.

Russell Coleman
Attorney General

/s/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distribution:

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