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OFFICE OF THE ATTORNEY GENERAL

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25-ORD-410

December 18, 2025

In re: Bridget McGinley/City of Covington

Summary: The Office cannot find that the City of Covington (“the City”) violated the Open Records Act (“the Act”) because the Office cannot resolve the factual dispute between the parties concerning receipt of a request for records. The Office declines to make a finding as to the reasonableness of delay in producing records where the City established by clear and convincing evidence that a request posed an unreasonable burden under KRS 61.872(6).

Open Records Decision

On November 7, 2025, Bridget McGinley (“the Appellant”) allegedly submitted a three-part request to the City for various records. In the first part, the Appellant requested “[a]ll communications and documents of [City] Employees and any employees or owners of Corporex, Champ Realty Investment Corp, Bexion Pharmaceuticals and any related businesses from January 1, 2015 – October 30, 2025.” Included in the request were “all mentions and written communications regarding” three individuals, as well as “any communications between the [City] and Champ Realty Investment Corp, Corporex,” and two individuals “regarding the acquisition of 209 Greenup St. Covington, KY from dates January 1, 2014 – October 31, 2025 and 11 East Rivercenter Blvd. from January 1, 2020 – October 31, 2025.”

In the second part of her request, the Appellant requested “all communications and documents regarding the \$15,000,000 ‘Covington Wet Research Lab’ appropriation in HB1 from 2022 by the General Assembly of Kentucky between any employees of the State of Kentucky and [any] employee or elected official of Kenton County[,] and any internal communications regarding the process of choosing Corporex as the Development Manager of the ONENKY Building,” including “any contract or payment made or received regarding the ONE NKY building and Covington Life Sciences Lab in Covington, KY or the Commonwealth Center for Biomedical Excellence.”

In the third part of the Appellant's request, she requested “[a]ll records, documents, and communications that include the ONE NKY Building[,] the Commonwealth Center for Biomedical Excellence and [a named individual], Corporex, Champ Realty, and [another individual] from January 1, 2015 – October 31, 2025.” Having received no response by November 18, 2025, the Appellant initiated this appeal.

Under KRS 61.880(1), a public agency must respond to a request for records within five business days after receipt. Here, the Appellant claims the City failed to timely respond to her request. However, the City states it did not receive the request before receiving notice of this appeal on November 18, 2025. Because the Office cannot adjudicate disputed issues of fact, such as whether an agency received a request to inspect records, the Office cannot find that the City failed to respond in a timely manner. *See, e.g.*, 22-ORD-010.

On appeal, the City asserts the records responsive to the Appellant's request are voluminous and include 14,430 emails. The City states it “will take a significant amount of time” to review and redact the emails and “around 15% [of the] emails will require further review by an attorney for the City as they may contain records confidentially disclosed to the City, attorney-client communications, preliminary drafts or notes, preliminary recommendations, and other items.” The City therefore claims the Appellant's request imposes an unreasonable burden. However, the City states it intends to comply with the request “in the interest of government transparency” and will make the records available by March 27, 2026.

Under KRS 61.872(6), “[i]f the application places an unreasonable burden in producing public records[,] the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.” “When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction.” 22-ORD-221. Of these, the number of records implicated “is the most important factor to be considered.” 22-ORD-182.

In 25-ORD-322, the Office found an agency had shown an unreasonable burden by clear and convincing evidence when its search resulted in 11,482 emails and attachments, which required review for “exemptions under personal privacy and FERPA [the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g], and potentially attorney-client privilege or preliminary drafts, notes, correspondence, or recommendations or memoranda.” Here, the City's search retrieved 14,430 emails requiring review, and the City anticipates redaction on many of the same grounds. Thus, the burden on the City is comparable to that determined to be unreasonable in

25-ORD-322. Therefore, the City has established by clear and convincing evidence that it could have denied the request under KRS 61.872(6). Because the City has elected to undertake the burden of reviewing and producing the records in the interest of transparency, the Office declines to make a finding as to whether the projected delay in producing records is reasonable. Accordingly, the Office cannot find that the City violated 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.

Russell Coleman
Attorney General

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

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Distributed to:

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