



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-411

December 18, 2025

In re: Kevin Swincher/City of Bowling Green

Summary: The City of Bowling Green (“the City”) did not violate the Open Records Act (“the Act”), either when it denied a request for a record restricted under KRS 227.370(2) or when it could not provide a record not within its possession, custody, or control.

Open Records Decision

Kevin Swincher (“the Appellant”) submitted a request to the City for “all open record reports, documentation and conclusive investigations related to the fire that occurred at [his residence] on January 21, 2025.” In a timely response, the City provided the Bowling Green Fire Department’s incident report and a series of emails between the Appellant and a Code Compliance Officer. The City also provided a copy of a letter explaining that the Fire Department “will not release any investigation report of fire loss to the public” in accordance with KRS 227.370. Additionally, the City stated it was withholding “an email chain between [its] Code Compliance and Animal Protection Division Manager and [her supervisor] that was deemed to be preliminary and [an] internal memorandum not used to make any final decisions and was exempt per KRS 61.878(1)(i)” and “another email chain between [the same manager and the] City Attorney that is exempt due to attorney client privilege (KRS 61.878(1)(l)).”¹ Finally, the City stated the Fire Department “did not complete the main investigation for this incident” and referred the Appellant to the FOIA page for the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). This appeal followed.

¹ Because KRS 61.878(1)(j) exempts from disclosure “[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended,” it would have been more appropriate for the City to cite that subsection instead of KRS 61.878(1)(i). However, because the Appellant does not address his appeal to the claimed exemptions under KRS 61.878(1)(i) or the attorney-client privilege, the Office makes no finding as to those exemptions.

The Appellant claims the City “has withheld critical evidence, including the accelerant-dog results and the secondary investigation findings.” In response, the City explains why those two records were not provided. According to the City, the Fire Department began an investigation into the fire by conducting an initial visit with a K9 unit, but it cancelled its investigation at the request of the city attorney due to pending litigation between the Appellant and the City. The City referred the matter to ATF to complete an external investigation.

The City states it did not provide the K9 report because it is exempt under KRS 227.370(2), which provides that “[r]eports of investigations of fire losses conducted by a fire department may, in the discretion of the chief of the fire department, be withheld from the public.”² KRS 227.370(2) is incorporated into the Act by KRS 61.878(1)(l), which exempts from disclosure “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” *See, e.g.,* OAG 84-19. Accordingly, the City did not violate the Act when it withheld the K9 report related to the initial investigation of the Appellant’s fire loss.

Regarding what the Appellant calls “the secondary investigation findings,” the City asserts it does not possess the report from ATF and is “unaware of [its] findings or contents.” Once a public agency states affirmatively that it does not possess a record, the burden shifts to the requester to make a *prima facie* case that the record exists within the agency’s possession, custody, or control. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the agency possesses the record, “then the 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). Here, the Appellant has not presented a *prima facie* case that the ATF report is in the City’s possession, custody, or control. *See, e.g.,* 22-ORD-040. Therefore, the Office cannot find that the City violated the Act when it did not provide the report of ATF’s investigation.

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.

² The City additionally claims “the K9 report is not conclusive.”

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Distributed to:

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