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OFFICE OF THE ATTORNEY GENERAL

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26-OMD-169

April 17, 2026

In re: Beth Musgrave/Lexington–Fayette Urban City Council

Summary: The Office lacks jurisdiction to consider a complaint alleging that Lexington–Fayette Urban City Council (“the Council”) violated the Open Meetings Act (“the Act”) because the complaint was not first submitted to the presiding officer of a “public agency” subject to the Act.

Open Meetings Decision

Beth Musgrave, on behalf of the Lexington *Herald–Leader* (“the Appellant”), submitted a written complaint to the Mayor and Vice Mayor of the City. In the complaint, the Appellant alleged that the Council’s “solar energy working group” (“the Working Group”) is a “public agency” under the Act, and that the Working Group violated the Act by not making its meetings open to the public. As a remedy, the Appellant proposed that all Working Group meetings be open to the public.

In a timely response, the City Council denied any violation of the Act. First, the Council explained that a quorum of the Council had not “ever convened to discuss public business as part of a solar working group.” Second, the Council denied that the Working Group is a public agency as defined by KRS 61.805(2). This appeal followed.

As an initial matter, the Office must be assured of its jurisdiction to render a decision under KRS 61.846(2). A complainant’s request for the Attorney General to review an agency’s denial of a complaint under the Act is a statutory proceeding created by the General Assembly as an act of legislative grace. As such, a complainant must strictly comply with KRS 61.846 before invoking the Attorney General’s jurisdiction to review the complaint. *See, e.g.*, 22-OMD-177. To invoke the Attorney General’s review under KRS 61.846(2), a complainant “shall begin enforcement” under subsection (1) of the statute. KRS 61.846(1). That provision requires the complainant to “submit a written complaint to the presiding officer of the public agency suspected of” violating the Act. *Id.* Accordingly, to begin enforcement, the complainant may not submit his complaint to just any person at the public agency; he must send it to the agency’s “presiding officer.” In 22-ORD-177, the Office

dismissed a complaint alleging the Jefferson County Public Schools Site Based Decision Making Council had violated the Act because the complainant failed to submit his complaint to the presiding officer of that agency.

Here, the Appellant cannot comply with KRS 61.846(1) if the Working Group is not a “public agency” subject to the Act. The Council explains that the Working Group was created by two Council members and joined by two others on a voluntary basis. It further explained that the Working Group “was an informal, voluntary group that came together to examine the future of solar energy in Lexington” and “was not empowered to take any action or form any public policy.”

The Act requires that “[a]ll meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times.” KRS 61.810(1).

The Appellant alleges that the Working Group is a public agency as defined in KRS 61.805(2)(f) and (g). Under KRS 61.805(2)(f), a public agency includes “[a]ny entity when the majority of its governing body is appointed by a ‘public agency’ as defined in paragraph (a), (b), (c), (d), (e), (g), or (h) of this subsection, a member or employee of a ‘public agency,’ a state or local officer, or any combination thereof.” Under KRS 61.805(2)(g), a public agency includes “[a]ny board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a ‘public agency’ as defined in paragraph (a), (b), (c), (d), (e), (f), or (h) of this subsection.”

Regarding the formation of the Working Group, the Council explains that the Working Group “has no governing body” and that the Council “did not appoint the [Working Group] that is the subject of” the Appellant’s complaint. Further, the Council states that it did not “establish, create, or control the group.”

As evidence, the Council provides a copy of the minutes from its July 3, 2025, meeting. The minutes include the following:

Ms. Sheehan announced that she and Mr. Sevigny would be forming a work group to discuss the future of solar power in Lexington. She noted Mr. Boone and Mr. Morton volunteered to join the group, and they would be seeking others to join.

Based on the above meeting minutes, the Office concludes that the Working Group is made up of volunteers rather than appointees.

Accordingly, the Working Group cannot be a public agency as defined by KRS 61.805(2)(f). The Working Group is made up of volunteer members, meaning that a majority of its governing body could not have been “appointed by a public agency.

Similarly, the Working Group cannot be a public agency as defined by KRS 61.805(2)(g). There is no evidence in the record that the Working Group was “established, created, and controlled” by the Council or any other public agency. At best, it could be argued that it was “established, created, and controlled” by two individual members of the Council. But even then, those two members, individually or collectively are not a “public agency” as defined in paragraph (a), (b), (c), (d), (e), (f), or (h)” of KRS 61.805(2). *See* KRS 61.805(2)(g).

For her part, the Appellant quotes KRS 61.805(2)(f) and (g), concluding the Working Group “fits both of those definitions under” the Act. The Appellant points to 19-OMD-092 and asserts that the Working Group is equivalent to the group at issue in that decision. In 19-OMD-092, the Office considered whether a group was a public agency under KRS 61.805(2)(f). In that decision, the Office noted that because “participating state agencies delegate[d] its representative(s) to serve on [the group,] its entire membership” was “appointed by a ‘public agency,’ a state or local officer, or any combination thereof.” 19-OMD-092. Thus, the Office concluded that group was a public agency as defined by KRS 61.805(2)(f). That holding is not instructive here, because the members of the Working Group are volunteers, not appointees.

Finally, the Appellant points to a draft “solar regulation ordinance” that the Working Group presented at the March 10 meeting of the Council’s General Government and Planning Committee. According to the Appellant, the drafting of the ordinance is proof that the Working Group is a public agency. The Office disagrees. The drafting of proposed ordinances does not affect the Office’s conclusion that a group made up of volunteers and not “established, created, and controlled” by a public agency cannot be a public agency under either KRS 61.805(2)(f) and (g). Rather, the fact that the Working Group had to present its proposed draft ordinances to the Council’s General Government and Planning Committee is evidence that the Working Group, standing alone, had no power to take any official action.

At bottom, the Working Group is not a public agency as defined by KRS 61.805(2)(f) or (g). Therefore, the Office cannot find that it violated the Act by holding a meeting not open to the public.¹

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.846(4)(a). 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
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Beth Musgrave, Appellant
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¹ No party alleges that a quorum of the Council met during the meetings of the Working Group. Therefore, the Council did not hold a series of public meetings, within the meaning of KRS 61.810(2).