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26-ORD-018

January 15, 2026

In re: Steven Megerle/City of Fort Thomas

**Summary:** The City of Fort Thomas (“the City”) violated the Open Records Act (“the Act”), when it failed to notify the requester in writing of its decision regarding requests under the Act. However, the Office cannot find that the City failed to perform an adequate search for records.

*Open Records Decision*

Steven Megerle (“Appellant”) submitted a request to the City containing five parts.<sup>1</sup> The City granted the Appellant’s request and provided responsive records as to one part of the request.<sup>2</sup> The Appellant initiated this appeal on two grounds: (1) the City failed to conduct a search for records or affirmatively state whether responsive records exist for the remaining parts of the request; and (2) the City did not give any written reason for denial.

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<sup>1</sup> The five parts of the Appellant’s request for “Documents to Be Produced” are: (1) a “[c]opy of Staff Report” for a specific application to the City on December 18, 2025; (2) “[a] copy of the application and any supporting documentation attached and made to the Urban Review Board” by specific people as the subject of a specific hearing; (3) “[a] copy of all notices of the December 18, 2025 Design Review Board hearing mailed to specific people concerning a specific hearing; (4) “[a] copy of all written communications, emails, letters text messages, between” specific people concerning a specific hearing; and (5) “[a] copy of the notice letter provided under KRS 100 for the map amendments to the Fort Thomas Zoning Code adopting the Tower Park historic overlay district mailed to all homeowners on Greene Street that took effect . . . in 2024.”

<sup>2</sup> The Appellant also asserts the City required the use of a particular form to complete his request. However, he does not provide any of those communications from the City. Because the Office does not have a written denial from the agency as to that issue, the Office lacks jurisdiction to adjudicate it. See KRS 61.880(2)(a).

First, the Appellant asserts the City denied his request and gave no reason for its denial of his request.<sup>3</sup> The Appellant further asserted that the City failed to affirmatively state whether responsive records exist. When a public agency receives a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall *notify in writing* the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1) (emphasis added). Here, the Appellant submitted a request to the City containing five parts, and in response, the City provided responsive records relating to only one part of the Appellant’s request. However, the City did not issue a written response to the other four parts of the request.<sup>4</sup> Thus, the City violated the Act.

Next, the Appellant asserted the City failed to conduct a search for records. On appeal, the City asserts that it “has provided all documents in its possession.”<sup>5</sup> Once a public agency states affirmatively that no further responsive records exist, the burden shifts to the requester to make a *prima facie* case that additional records do exist. *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, to make a *prima facie* case that the City failed to conduct an adequate search, the Appellant asserts the City failed to provide any “text messages” in response to his request.<sup>6</sup> But the failure to produce any text messages does not prove that any text messages exist. The Appellant therefore has failed to make a *prima facie* case that the City failed to perform an adequate search for records or that it

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<sup>3</sup> The Appellant asserts the City would not allow in-person inspection of the requested records. Yet, he does not provide any written denial of in-person inspection. Accordingly, the Office lacks jurisdiction to adjudicate that issue. *See* KRS 61.880(2)(a). On appeal, the City asserts it did not deny in-person inspection of the records but, rather, was unable to provide “immediate inspection” and needed “a reasonable time frame to schedule such inspection” of the records.

<sup>4</sup> Specifically, the City denied part one of his request for a “[c]opy of Staff Report” for a specific application to the City on December 18, 2025, because “[t]here is no staff report included due to the meeting being postponed.”

<sup>5</sup> A statement from a public agency that it has provided all records within its possession is “tantamount to an affirmative statement that the remaining records requested do not exist.” 04-ORD-040.

<sup>6</sup> On appeal, the City states affirmatively that it does not possess any “text message” records.

possesses any additional records it has not provided to him. Therefore, 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 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/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

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