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26-ORD-087

March 12, 2026

In re: Lori Davenport/City of Ludlow

Summary: The City of Ludlow (“the City”) violated the Open Records Act (“the Act”) by failing to send a written response within five business days of receiving the request, as required by KRS 61.880(1). However, the City did not violate the Act by providing the requester with copies of all existing, responsive records it possesses.

Open Records Decision

On November 20, 2026, the Appellant submitted a request¹ asking for “access to and copies of all records in the possession of [the City] that document any **incentive pay, additional compensation, stipends, bonuses, special pays, or extra pay of any kind** provided to Scott Smith from his date of hire with the [City] to present” (emphasis in original).² On December 22, 2025, having received no response to her request, the Appellant initiated this appeal.

Upon receipt of a request, a public agency “shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays,” 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.” The City admits it failed to send a written response within five business days of receiving the Appellant’s November 20 request. Accordingly, the City violated the Act when it did not respond timely to the request.

¹ The request at issue here is a more specific follow-up to the request which was the subject of 25-ORD-311. After that decision was issued, the City provided certain “wage reports” to the Appellant.

² The Appellant noted this request includes but is not limited to: (1) “Records showing the type, amount, and date of any incentive, extra, or bonus payments”; (2) “Documentation, memos, authorizations, contracts, agreements, or policies related to such payments”; and (3) “Payroll records that reflect these payments.”

On appeal, the City maintains the Appellant's November 20 request does not implicate any records beyond those previously provided. The Appellant also has not identified any specific records that she believes the City has improperly withheld. Regarding the suggestion that additional records exist in the City's possession, the City Attorney emphasizes the Appellant "offers no support for this allegation, other than her bare assertion that such records 'probably' exist." In support of its position that no additional records exist, the City explains:

[It] offered no bonus or other compensation to Mr. Smith as remuneration for his employment with the City. Such bonuses would be illegal. The City, after a public hearing and a vote of City Council, settled a threatened lawsuit with Mr. Smith earlier this year, which payment was separate and apart from his current employment with the City. If Ms. Davenport is seeking records relating to that settlement, she should state so plainly in her Request. As written, Ms. Davenport's Request does not appear to include those records.

Once a public agency states affirmatively that certain records do not exist, the burden shifts to the requester to make a *prima facie* case that the requested records do or should exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d at 341. If the requester is able to make a *prima facie* case that the records do or should exist, then the public 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).

According to the Appellant, "[i]t is highly improbable that an employee receiving any form of compensation beyond standard salary (such as 'incentive pay, stipends, bonuses,' etc.) would not have supporting documentation, memos, or detailed payroll records beyond a general annual wage report." The Appellant further claims the City's "failure to identify and produce" any of the categories of records that she requested "strongly suggests" the City has either failed to conduct a "reasonable and good-faith search" or improperly withheld nonexempt records.

Here, the Appellant has not made a *prima facie* case that the City possesses any responsive records that were not provided. Rather, the Appellant believes it is "highly improbable" that the City possesses additional, responsive records and its failure to identify and produce additional records necessarily means it either did not conduct a proper search or is withholding such records. But that bare allegation offers no evidence proving that the requested records exist. A requester's bare assertion that a public agency "possesses a requested record is insufficient to establish a *prima facie* case that the agency, in fact, possesses it." 25-ORD-063; see, e.g., 22-ORD-040. Rather, to make a *prima facie* case that the agency possesses or should possess the requested records, "the requester must point to some statute, regulation, or factual

support for this contention.” *Id.*; *see, e.g.*, 21-ORD-177; 11-ORD-074. Because the Appellant has provided only a bare assertion, not proof, she has not made a *prima facie* case that the City possesses additional responsive records. Accordingly, the Office cannot find the City violated the Act when it did not provide nonexistent records. *See* 26-ORD-336; 25-ORD-063.

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/ Michelle D. Harrison
Michelle D. Harrison
Assistant Attorney General

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Distributed to:

Lori Davenport, Appellant
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