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26-ORD-099

March 16, 2026

In re: Valerie Frost/City of Winchester

**Summary:** The City of Winchester (“the City”) violated the Open Records Act (“the Act”) by failing to provide a detailed explanation of the cause for its delay in providing the requester with copies of any responsive and nonexempt records as required under KRS 61.872(5).

***Open Records Decision***

On January 21, 2026, Valerie Frost (“the Appellant”) submitted a request to the City for “copies of records held by the City Manager’s Office relating to the submission, receipt, routing, or intake of an Open Records Request concerning me, Valerie Frost, that was stamped or recorded between the years of 2022-2026.” In particular, she requested “any and all system-generated metadata or logs associated with the Open Records Requests.”<sup>1</sup>

If no such “time-based metadata exists,” the Appellant requested the City to “please confirm in writing: 1. whether the absence of timestamps is due to system configuration, record-retention policy, or manual practice; and 2. identify the system(s) used by the City Manager’s Office to receive and process Open Records Requests.”<sup>2</sup> That same day, the City Clerk confirmed receipt of the Appellant’s request but stated, “Please be advised that I do not know how to get this information

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<sup>1</sup> This portion of the request included: (1) “server logs or backend submission records”; (2) “email headers or routing metadata”; (3) “intake platform or portal records”; (4) “workflow, ticketing, or tracking system entries”; or (5) “any other electronic records reflecting date and time of receipt or processing.”

<sup>2</sup> The Act does not require a public agency to compile information, respond to questions, or create a record to comply with a request. *See Dept of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The [Act] does not dictate that public agencies must gather and supply information not regularly kept as part of its records[.]”).

but will try. It will take longer than the normal five business days to process your request.”<sup>3</sup>

On February 9, 2026, the Appellant requested an update regarding the status of her request, and the City Clerk responded that she was “still in the process of recovering data” and that she had been “out of the office due to weather.” Having received no final response on behalf of the City, or any records, the Appellant sent an email to the City Clerk on February 17, 2026, stating, “It has now been well beyond five (5) business days since my request was submitted. While you indicated that additional time would be required, no specific statutory basis for delay or date certain for production has been provided.” This appeal followed.

Under KRS 61.880(1), a public agency must determine within five business days whether to grant a request for public records or deny it and notify the requester, in writing, of its decision. A public agency is permitted to extend the period for production of the records under KRS 61.872(5), but only if the records are “in active use, in storage or not otherwise available,” *and* the agency provides “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection.”

Under KRS 61.880(4), “If a person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . delay past the five (5) day period described in” KRS 61.880(1), or “excessive extensions of time,” the person may complain in writing to the Office, “and the complaint shall be subject to the same adjudicatory process as if the record had been denied.” Here, the City complied with KRS 61.880(1) insofar as it sent a written response within five business days, but it neither granted or denied the request within that period nor satisfied the requirements of KRS 61.872(5). For this reason, the City’s initial response violated the Act.

In light of KRS 61.872(5), however, the Office has consistently recognized that persons requesting large volumes of records may “expect reasonable delays in records production.” 12-ORD-228. The reasonableness of such a delay “is a fact-intensive inquiry.” 21-ORD-045 (noting that the Office considers “the number of the records,

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<sup>3</sup> Under KRS 83A.085(3)(b), the City Clerk is charged with “[p]erformance of the duties required of the ‘official custodian’ or ‘custodian’ in accordance with KRS 61.870 to 61.882.” KRS 61.870(5) defines “Official Custodian” as “the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control.” On the other hand, KRS 61.870(6) provides that “‘Custodian’ means the official custodian or any authorized person having personal custody and control of public records[.]”

the location of the records, and the content of the records” when “determining whether a delay is reasonable”).

Here, the City did not initially estimate the volume of records implicated, nor did it indicate on appeal that volume was a factor in delaying access to any existing records; likewise, the City failed to provide information regarding the location or content of such records. The City’s only explanation was its initial response acknowledging it was “behind” in processing the request and noting its offices were “closed for two days due to weather” and that the City Clerk had been “out of the office a lot lately due to illness in my family.” The City Clerk also explained she “has no IT, so I’m checking with the people that work on our computers [to determine] if they can get the information that you are requesting. . . . I do not know anything about intake logs, databases or tracking systems or how the City’s electronic submission system works. All of that was set up before my time as [the records custodian].”<sup>4</sup>

None of these reasons justify the ongoing delay in either providing the Appellant with copies of any existing, responsive, and nonexempt records or, in the alternative, properly invoking KRS 61.872(5) by explaining in sufficient detail the legally permissible reasons for delaying access to any such records and the specific date by which the City will make the records available. Rather, the Office has consistently recognized “the absence of an agency’s official records custodian does not alleviate the agency of its duty to determine within five business days whether it will grant or deny a request.” *See* 09-ORD-091 (statutory period for a response “cannot be extended to accommodate the schedules of agency staff”); 02-ORD-165 (“If the records custodian goes on vacation, or is unable to attend to his duties because of illness, or an accident, the agency is obligated to designate another person to review and handle open records requests in the absence of the regular custodian of the records[.]”); 23-ORD-157. Furthermore, “even if weather conditions were a proper basis for delay under KRS 61.872(5),” the City has advised it was only closed for two days because of inclement weather, and the City did not otherwise comply with KRS 61.872(5) by providing a detailed explanation. 21-ORD-076.

In all instances, a public agency bears the burden of justifying its action. KRS 61.880(2)(c); KRS 61.880(1); 24-ORD-063. Based on the limited information provided here, the City has not met its burden of proof to justify the ongoing delay in providing the Appellant with copies of any existing, responsive, and nonexempt records or affirmatively stating which records, if any, the City does not possess.

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<sup>4</sup> The City Clerk provided a timeline of the correspondence between the City and the Appellant, including copies of emails relating to previous requests by the Appellant. However, the City did not provide any further explanation of its position or context in which to view the correspondence it provided, none of which alters the relevant legal analysis or the conclusion that it violated the Act.

Accordingly, the City subverted the intent of the Act within the meaning of KRS 61.880(4).

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:

Valerie Frost, Appellant  
Joy Curtis, Winchester City Clerk  
JoEllen Reed, Mayor of Winchester  
William Dykeman, Winchester City Attorney