



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

26-ORD-185

April 30, 2026

In re: Melissa Shreve Bebout/City of Morganfield

Summary: The City of Morganfield (“the City”) violated the Open Records Act (“the Act”) by failing to either provide the requester with all existing, responsive, and nonexempt records within five business days or properly invoke KRS 61.872(5) by providing a detailed explanation of the cause for the delay in providing some records and the earliest date on which those records would be made available. However, the City remedied these errors on appeal.

Open Records Decision

On March 26, 2026, Melissa Shreve Bebout (“the Appellant”) submitted a request to the City for seven categories of records pertaining to “Mural Grant Funds/Payments to [Mayor] Randy Greenwell.”¹ The City acknowledged receipt of the request the same day, and it electronically provided copies of some responsive records to the Appellant on March 31, 2026. On that day, the Appellant confirmed receipt of the records but stated that “several categories of records specifically requested were not included” among the records that she received, including “[b]ank statements and account records reflecting receipt and disbursement of grant and

¹ In particular, the Appellant requested copies of the following records: (1) “All records related to any mural project funded in whole or in part by grant funds,” including grant applications, documentation, agreements, and conditions; (2) “All financial records reflecting the receipt, allocation, and disbursement of grant funds related to the mural project,” including general ledger entries, journal entries, fund transfers, check registers, and payment logs; (3) “All invoices, receipts, reimbursement requests, vouchers, and supporting documentation for payments made to Randy Greenwell,” including a voucher dated August 21, 2023, and payments in the amounts of \$10,000 and \$1,410.82; (4) “Any contracts, agreements, or written authorizations between the [City] and [Mr. Greenwell]”; (5) “Minutes, agendas, and recordings of any city council or committee meetings” at which the mural project was discussed, the funding was approved, or payments or reimbursements were authorized; (6) “Any conflict-of-interest disclosures, ethics filings, or recusal documentation related to Randy Greenwell and the mural project”; and (7) “All correspondence (including emails and text messages) between city officials, employees, or contractors” regarding the mural project, the use of grant funds, or payments and reimbursements to Mr. Greenwell.

related funds.” The Appellant asked the City whether it would provide copies of those records, or it was contending that some of the records “do not exist or are being withheld.” On April 2, 2026, the Appellant initiated this appeal, noting the City had not responded to her March 31 follow-up email or provided additional records, nor had the City denied their existence or cited a statutory basis for denying access.

On appeal, the City stated that it “provided what it believed to be all responsive documentation” to the Appellant on March 31, 2026, and included copies of the additional records it provided to support its position. Upon receipt of the Appellant’s March 31 follow-up inquiry, the City realized it had “failed to supply bank statements as requested.” On April 2, 2026, however, the City provided copies of all existing, responsive bank statements to the Appellant, copies of which it also provided to the Office. In its response on appeal, the City further clarifies that “[n]o additional documentation exists. There were no documents withheld.” Because the City provided the Appellant with copies of the bank statements that were inadvertently omitted from its original disclosure on April 2, it notes it ultimately provided her with copies of all existing, responsive records within five business days of receiving her initial request, as required under KRS 61.880(1).

Under the Act, upon receipt of a request for public records a public agency must determine “within five (5) [business] days . . . 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). If a public agency denies a request, in whole or in part, its response must include “a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.* A public agency cannot simply ignore portions of a request. *See, e.g.,* 24-ORD-182; 21-ORD-090. If the records exist but a statutory exception permits the agency to withhold the records (or justifies redacting the records), the agency must cite the statutory exception and explain how it applies under KRS 61.880(1). *See also* KRS 61.880(2)(c). Conversely, if the agency does not possess the requested records, then the agency must affirmatively state that it does not possess the records. *See Bowling v. Lexington–Fayette Urb. Cty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005); 24-ORD-182.

Here, the City responded within five business days of receiving the Appellant’s request by electronically providing her with copies of some records, but it did not send a written response to accompany those records. Accordingly, the City failed to affirmatively indicate whether the remainder of the records did not exist or deny the remainder of the request and cite the statutory basis for denial. Moreover, when a subsequent search reveals additional records not previously found, the agency’s initial search “was clearly insufficient to locate all responsive records.” 25-ORD-165; 21-ORD-242, 21-ORD-178. The City’s later production of records on April 2 further demonstrates that its original response failed to comply with KRS 61.880(1) by

indicating that certain records were not being provided at that time.² Therefore, the City failed to comply with KRS 61.880(1) initially, and so it violated the Act.³

Once a public agency states affirmatively that certain records do not exist, as the City has now done on appeal, the burden shifts to the requester to make a *prima facie* case that the requested records do or should exist. *See Bowling*, 172 S.W.3d at 341. If the requester makes 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). 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.*, 26-ORD-087; 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.*, 26-ORD-087; 21-ORD-177; 11-ORD-074.

Here, the Appellant has not attempted to make a *prima facie* case that the City possesses any responsive records that have not already been provided. Rather, upon receipt of the City’s appeal response, the Appellant only reiterated her position that the City failed to comply with the procedural requirements of the Act by: (1) “[n]ot providing a complete response to the request”; (2) “[n]ot stating whether additional records existed or did not exist”; (3) “[n]ot citing any applicable exemptions for withheld materials”; and (4) “[d]elaying production of records until after an appeal was filed.” Because the Appellant has not made a showing that the City possesses additional, responsive records,⁴ the Office cannot find the City violated the Act when it did not provide nonexistent records.

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 Office notes that an agency must invoke KRS 61.872(5) when it must delay production of responsive records that are “in active use, in storage or not otherwise available.”

³ The City ultimately remedied this violation by providing responsive records within five business days of receiving the Appellant’s request.

⁴ The Office has consistently found that it is unable to resolve factual disputes between the parties to an appeal under KRS 61.880(2)(a), such as whether the public agency has provided all existing records responsive to a request, and whether the responsive records should include additional content. *See, e.g.*, 25-ORD-114; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81.

Russell Coleman
Attorney General

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

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Distributed to:

Melissa Shreve Bebout, Appellant
Randy Greenwell, Mayor of Morganfield
Scott Clements, City of Morganfield Administrator
Lindsay Durbin, City of Morganfield Attorney