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26-ORD-212

May 14, 2026

In re: Kevin Moulton/City of Pioneer Village

**Summary:** The City of Pioneer Village (“the City”) did not violate the Open Records Act (“the Act”) by providing copies of all existing, responsive records it possesses upon receipt of a request. However, the Office cannot resolve a factual dispute regarding whether the City also complied with KRS 61.880(1) by sending a written response to accompany those records and either confirm it had provided all existing, responsive, and nonexempt records or deny their existence. The City violated the Act when it did not respond to the Appellant’s February 25 request.

***Open Records Decision***

This appeal concerns two requests submitted to the City by Kevin Moulton (“the Appellant”).

On February 25, 2026, the Appellant submitted a “second request and clarification” regarding his January 5, 2026, request<sup>1</sup> for multiple categories of records pertaining to a Certificate of Need (“CON”) application the Zoneton Fire Protection District, Inc. filed with the Kentucky Board of Emergency Medical Services (“EMS”).<sup>2</sup> In particular, the Appellant requested copies of “[a]ll records in any format,

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<sup>1</sup> On January 5, 2026, the Appellant requested the following categories of records from January 1 to December 31, 2025: (1) “Communications Related to the [CON]”; (2) “Legal Advice, Opinions, or Direction”; (3) “Resolution Opposing the CON”; (4) “Meetings and Executive Sessions”; (5) “Communications with State Agencies or Regulators”; (6) “Financial, Operational, or Service-Impact Analyses”; (7) “Contracts, Agreements, or Commitments to House a BCEMS Unit”; and (8) “Contracts, and Fire Department Feasibility Communications.”

<sup>2</sup> The Appellant provided the Office with a copy of the December 16, 2025, letter from the Mayor to the Cabinet for Health and Family Services, Office of Inspector General, in which he stated the City and four other municipalities did not “wish to fall under the medical care or primary EMS response of the Zoneton Fire Protection District.” In addition, the Appellant provided a copy of Resolution No. 25-

that were relied upon in drafting or approving the above-quoted statement in the Resolution,” “[a]ny response time data, statistical analyses, performance matrices, compliance evaluations, or comparisons to recognized standards (including, but not limited to, national benchmarks),” and “[a]ny written or electronic communications discussing the basis for concluding that BCEMS ‘meets and exceeds all needs of the community.’” The Appellant stated he did not previously receive the “data, reports, analyses, or information relied upon or provided to support the assertion that [Bullitt County] EMS response times are acceptable and that the service meets or exceeds community needs.”<sup>3</sup> The Appellant further asked the City to “provide a written certification that no such records exist” if the City does not have such records. On March 5, 2026, the Appellant initiated this appeal, claiming the City failed to respond timely per KRS 61.880(1) upon receipt of his February 25 request, and further asserting the City “has failed to produce all requested records, has not invoked any exemption under KRS 61.878 to justify withholding information, and has not provided a definite or reasonable timeframe for compliance, as required by KRS 61.872(5).”

On February 26, 2026, the Appellant submitted a request to the City for various records relating to an “agreement between the City and Connor Sturgill and/or the Vaughn Petitt Legal Group for legal representation of the City in matters involving the Zoneton Fire Protection District’s Certificate of need.” Having received no response to this request by March 6, 2026, the Appellant initiated his second appeal.<sup>4</sup>

Under KRS 61.880(1), a public agency must respond to a request for public records “within five (5) days, excepting Saturdays, Sundays, and legal holidays, 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.”

On appeal, the City does not dispute the Appellant’s claim that it did not respond in writing to his February 25, 2026, request. Therefore, the Office must conclude that the City violated the Act.

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03, “A Resolution to Join with Bullitt Fiscal Court in Contesting the Certificate of Need filed by Zoneton Fire Protection District to establish an Ambulance Service.”

<sup>3</sup> The Appellant did not include a copy of the City’s response to his January 5 request, nor did he affirmatively state the City failed to send a written response to him per KRS 61.880(1). Rather, on appeal, he states the City “acknowledged” his request “but provided very little documentation.” Accordingly, this appeal is only perfected as to his February 25, 2026, request and the Office will not analyze the propriety of the City’s response to his January 5 request. *See* KRS 61.880(2)(a); 40 KAR 1:030 § 1.

<sup>4</sup> Because both appeals arose out of requests directed to the City, and because the City’s lack of responsiveness is a principal issue in both appeals, the Office has consolidated them. *See, e.g.*, 22-ORD-167.

Regarding the Appellant's February 26 request, the City did respond, stating that the Appellant "was provided copies of all records maintained by [the City's] records custodian as requested by him. The records custodian has no additional records to supply." Acknowledging the records custodian "did not specifically state that in her response," the City Attorney confirms that "no addition[al] records exist concerning this issue." Rather, the City "did not withhold any records, nor claim any records were exempt from disclosure." In further defending the City's position that it does not possess any additional, responsive records, the City Attorney explains the City is located less than two miles from the University of Louisville-South Hospital. Thus, "[i]t did not take any records for the City Council to reach a decision that doubling the tax payable to the Zoneton Fire Protection District by its city residents for another ambulance service instead of the existing county ambulance service was not worth the additional cost proposed."

The Office has regularly found that it is unable to resolve factual disputes between a requester and a public agency, such as whether an agency received a request or a requester received a response to it. *See, e.g.*, 23-ORD-276 (factual dispute as to whether a requester received a response to his request). Similarly, here, the Office cannot find the City violated the Act by failing to respond to the February 26 request because the Office cannot resolve the factual dispute between the parties as to whether the Appellant received the City's response to that request.

However, 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 v. Lexington-Fayette Urb. Cty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). 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 also, 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.*

Even assuming the Appellant has made a *prima facie* case here by attaching documents that may *suggest* that additional records, and "communications" in particular, could or should have been created and still exist, the City has now adequately explained the reason for the nonexistence of such records. *See Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011). Accordingly, the City has discharged its duty under the Act. *See* KRS 61.880(1), (2)(c). The Office has no basis upon which

to find the City violated the Act by not providing additional, responsive records it does not possess.

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:

Kevin Moulton, Appellant  
Gary Hatcher, Mayor  
Mark Edison, City Attorney