



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-215

May 14, 2026

In re: Kevin Moulton/City of Fox Chase

**Summary:** The City of Fox Chase (“the City”) violated the Open Records Act (“the Act”) when it failed to respond to two requests within five business days of receiving them. However, the City did not violate the Act when it denied requests for records it does not possess.

***Open Records Decision***

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

On January 5, 2026, the Appellant submitted a request to the City for eight categories of records related to the City’s fire services. On January 19, 2026, the City granted some of the requests and provided responsive records, and it denied others because it did not possess responsive records.

On February 25, 2026, the Appellant submitted an additional request for records related to three categories of records also having to do with the City’s fire services. On March 5, 2026, the Appellant appealed, claiming he had yet to receive a response to the second request and that the City failed to provide all responsive records to his first request.

On February 26, 2026, the Appellant submitted another request to the City for three categories of records related to the City’s legal representation. On March 6, 2026, the Appellant again appealed, claiming he had yet to receive a response from the City.<sup>1</sup>

---

<sup>1</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 timeliness of the City's response and lack of responses under KRS 61.880(1), upon receiving 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." Here, the Appellant submitted three requests to the City, and the City only responded to one of them. The City does not dispute this claim. Thus, the City violated the Act when it failed to respond to two of the three requests within five business days.

Next, the Appellant asserts that the City possesses additional records responsive to his January 5 request, which it failed to produce. Once a public agency states affirmatively that it does not possess additional responsive records, the burden shifts to the requester to make a *prima facie* case that the additional records exist and that they are within the public agency's possession, custody, or control. 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 does or should possess additional records, "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). To make a *prima facie* case that the agency possesses or should possess the additional records, the requester must provide a statute, regulation, or factual support for that contention. See, e.g., 23-ORD-207; 21-ORD-177; 11-ORD-074.

Here, the Appellant asserts that "[t]he City has failed to produce all requested records," but he provides no proof in support of his assertion. As a result, the Appellant has not made a *prima facie* case that the City possesses any additional records responsive to his January 5 request that it has not already provided. Moreover, in its original response to the January 5 request, the City addressed each part of the Appellant's request separately, identifying the record responsive to that part of the request or stating that "none" existed. Accordingly, the City did not violate the Act when it did not provide the Appellant with records that it does not possess.

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](mailto:OAGAppeals@ky.gov).

**Russell Coleman**  
**Attorney General**

/s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

#170 & 209

Distributed to:

Kevin Moulton  
Jose Cubero  
Mark E. Edison  
Joy Priddy