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-249

June 2, 2026

In re: Brandy Lain/City of Salyersville

Summary: The City of Salyersville ("the City") violated the Open Records Act ("the Act") when it failed to respond to a request within five business days and failed to give detailed explanations for the cause of its delays in producing responsive records. The City subverted the intent of the Act, within the meaning of KRS 61.880(4), by delay past the five-day period provided in KRS 61.880(1), by excessive extensions of time, and by limiting inspection of records to one hour at a time. The City did not violate the Act when it required a requester located in the same county to inspect the records prior to obtaining copies, or when it could not provide records that do not exist.

Open Records Decision

This appeal involves four separate records requests submitted to the City by Brandy Lain ("the Appellant").[1] Although the procedural timelines overlap to some extent, the City's dispositions of the four requests will be considered separately for the sake of clarity.

First request – January 29, 2026

On January 29, 2026, the Appellant requested copies of various records of Salyersville Water Works. Specifically, she requested all "leak/break logs, including location and estimated leak size (last 5 years)"; "[a]ll water loss reports, audits, and system loss estimates (last 5 years)"; "[a]ll work orders repair records, contractor invoices, and maintenance logs related to waterline and distribution infrastructure"; "[a]ll correspondence (emails, memos, texts) referring to water leaks, infrastructure

[1] Although the Appellant provided some correspondence pertaining to various other requests, the four considered here are the only requests concerning which she forwarded a copy to the Attorney General in compliance with KRS 61.880(2)(a). Thus, only those four requests are at issue in this appeal.

failures, or unplanned outages); "[r]ecords showing monitoring or metering data used to calculate system losses"; and "any plans or reports submitted to funders or oversight entities describing infrastructure condition and replacement schedules."[2]

The City issued a joint reply on February 4, 2026, to this and another, unrelated request made by the Appellant on the same date. Citing KRS 61.872(5), the City stated, "Due to the volume of records requested, the multi-year time span involved, and the fact that responsive records are maintained by multiple City departments and custodians, the requested records are not immediately available for inspection and copying. Additionally, the City is currently responding to a significant number of pending Open Records requests with limited administrative staff." The City stated it would "be able to issue a substantive response and/or make records available for inspection on or before February 23, 2026."

On February 23, 2026, the City issued a final response stating the records had "been identified and compiled" and would "be made available for inspection during regular business hours at City Hall." The Appellant did not inspect the records, but emailed the City on March 3, 2026, stating her opinion that the request had "not been fulfilled in entirety" and asked the City to "send copies." The City issued another response on March 4, 2026, reiterating that the records were "available for inspection at City Hall during regular business hours," and that copies could "be obtained upon request at the statutory rate of $0.10 per page." This appeal followed.

Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it. This time may be extended under KRS 61.872(5) when records are "in active use, in storage or not otherwise available" if the agency gives "a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record will be available for inspection." In light of this provision, the Attorney General has recognized that persons requesting large volumes of records should "expect reasonable delays in records production." 12-ORD-228. However, a vague statement about the "volume" of a request is not a "detailed explanation" under KRS 61.872(5). *See, e.g.,* 22-ORD-164; 17-ORD-194. Moreover, while many unrelated, simultaneous requests to inspect records may place a strain on a public agency, "[n]either the volume of unrelated requests nor staffing issues justifies a delayed response." 19-ORD-188 n.1; *see also* 25-ORD-013; 24-ORD-063; 22-ORD-167. Although the unlimited temporal scope of portions of the Appellant's request tends to suggest it was necessary to retrieve some records from storage, it is the agency's burden to state such facts expressly. Thus, the cursory statement contained in the City's initial response failed to provide the "detailed explanation" required by KRS 61.872(5).

[2] The last four items of the request contained no express limitation on temporal scope.

Under KRS 61.880(4), a person who "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), may appeal to the Attorney General as if the record had been denied. Here, part of the Appellant's appeal amounts to a claim that the City has subverted the intent of the Act by unreasonable delay in producing records. Under KRS 61.880(2)(c), a public agency has the burden of proof that a delay in producing records is reasonable. *See, e.g.,* 21-ORD-045. In determining whether a delay is reasonable, the Office considers such factors as the number, location, and content of the requested records. *Id.* "Weighing these factors is a fact-intensive inquiry." *Id.* Here, the City has provided no information about the number of records implicated by the request, the location of the records, or any issues posed by the content of the records. Accordingly, the City has not met its burden of proof to justify a delay of 12 additional business days. Thus, the City subverted the intent of the Act, within the meaning of KRS 61.880(4), by delaying the Appellant's access to the requested records.

The Appellant additionally claims the City violated the Act by making the records available for her inspection instead of sending her copies. However, under KRS 61.872(3)(b), only "a person whose residence or principal place of business is outside the county in which the public records are located" has the right to receive copies without first having inspected the records in person. *See Commonwealth v. Chestnut,* 250 S.W.3d 655, 661 (Ky. 2008). A requester from within the same county "may inspect the public records [d]uring the regular office hours of the public agency" under KRS 61.872(3)(a) and then may obtain copies "[u]pon inspection" under KRS 61.874(1). *See, e.g.,* 25-ORD-182; 22-ORD-156 n.2; 21-ORD-157. Because it does not appear from the record that the Appellant resides or has her principal place of business outside Magoffin County, the City did not violate the Act when it did not send the Appellant copies of the requested records prior to inspection.

Second request – February 26, 2026

On February 26, 2026, the Appellant submitted a new request that was identical to her January 29 request.[3] In a timely response, the City stated the responsive records had already "been located and compiled" and could be inspected and copied during regular business hours. However, the City stated inspection would only "be available by appointment in one-hour sessions" due to "staffing limitations and ongoing municipal operations."

[3] In its response to this appeal, the City addresses a separate request from the Appellant for a different set of records, also submitted on February 26, 2026. However, the Office's jurisdiction in this appeal is limited to the requests and responses provided by the Appellant. *See* KRS 61.880(2).

Under KRS 61.872(3)(a), a Kentucky resident may inspect public records "[d]uring the regular office hours of the public agency." Although an agency's request to schedule an appointment to inspect records is not an inherent subversion of the intent of the Act, within the meaning of KRS 61.880(4), it may rise to the level of a subversion when it imposes "a restrictive requirement" or becomes "a cause of delay." 20-ORD-013. Accordingly, an agency subverts the intent of the Act when it "limits its hours of inspection to a shorter time" than its regular business hours. 22-ORD-126 (citing 93-ORD-48). Here, the City limited the Appellant's inspection to "one-hour sessions" with no justification beyond ordinary factors such as "staffing limitations and ongoing municipal operations." Thus, the City subverted the intent of the Act, short of denial of inspection, within the meaning of KRS 61.880(4).

Third request – March 2, 2026

On March 2, 2026, the Appellant requested certain records relating to water service at her residence since January 1, 2025. Specifically, she sought "[a]ll meter reading logs," "[a]ny Automated Meter Reading (AMR) or remote meter data logs," "[r]oute sheets or field service documentation reflecting scheduled meter reads," "[b]illing system entries reflecting whether monthly charges were based on [a]ctual read, [e]stimated read, [or m]inimum/base charge without read," "[a]ny reconciliation or adjustment records reflecting true-up of estimated billing to actual usage," "[t]he current rate ordinance establishing minimum monthly water and sewer charges," "[d]ocumentation of internal policy governing frequency of meter readings and reconciliation procedures," and "[t]he most recent annual water loss report submitted to any state agency." On March 6, 2026, the City responded that "[b]ecause responsive records must be retrieved from the Water Works system and reviewed prior to production, additional time is necessary to complete this process." The City stated the records would be provided by March 17, 2026, the eleventh business day after it received the request.

Again, an agency delaying the production of records beyond the five business days provided in KRS 61.880(1) must give a "detailed explanation of the cause." KRS 61.872(5). The fact that records must be "retrieved [and] reviewed" is a normal part of processing any request under the Act and does not, by itself, justify additional delay. *See, e.g.,* 15-ORD-029. Therefore, the City violated the Act when it did not grant timely access to records and did not properly invoke KRS 61.872(5).

On March 17, 2026, the City notified the Appellant that the requested records were available, and the Appellant provided some suggested dates and times for inspection. Subsequently, however, the City determined the records were not as numerous as it had anticipated. Therefore, the City provided some of the responsive records to the Appellant by email on March 19, 2026. The City stated, however, that "the most recent annual water loss report [was] not included" and would be provided to the Appellant by March 24, 2026. The City did not explain the reason for further

delay in providing the water loss report. One way in which an agency can subvert the intent of the Act under KRS 61.880(4) is by "excessive extensions of time." A public agency subverts the intent of the Act by excessive extensions of time when it fails to meet a self-imposed deadline to make records available. *See, e.g.,* 23-ORD-079; 21-ORD-011. Here, because the City imposed a further, unexplained delay in providing the water loss report, it subverted the intent of the Act within the meaning of KRS 61.880(4).

In its email on March 19, 2026, the City also stated some of the requested records do not exist. Specifically, the City asserted there were no records responsive to the requests for "Automated Meter Reading (AMR) or remote meter data logs," "[r]oute sheets or field service documentation," "[r]econciliation or adjustment records reflecting estimated billing true-ups," or "[d]ocumentation of internal policies governing meter reading frequency and reconciliation procedures." Once a public agency states affirmatively that no responsive records exist, the burden shifts to the requester to make a *prima facie* case that the records do or should exist. *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 records do or should exist, "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). A requester must provide some evidence to make a *prima facie* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record or other factual support for the existence of the records. *See, e.g.*, 21-ORD-177; 11-ORD-074.

Here, the Appellant merely states the requested records should exist because they are "routine operational records" that are "required [to] be maintained." However, the Appellant provides no evidence of any such requirement. A requester's bare assertion that certain records should exist is insufficient to make a *prima facie* case that the records actually do exist. *See, e.g.*, 22-ORD-040. Therefore, the City did not violate the Act when it could not provide records that do not exist.

Fourth request – March 4, 2026

On March 4, 2026, the Appellant submitted a multi-part request for various "records relating to utility billing practices, meter readings, system reconciliation, and financial transfers involving Salyersville Water Works" from January 1, 2023, to the date of the request. The record on appeal does not reflect that the City responded to this request before March 19, 2026, when it informed the Appellant the records were available for inspection. The City provided no explanation for its delay in responding. Accordingly, the City violated the Act when it failed to respond the Appellant's request within five business days as required by KRS 61.880(1).

Conclusion

In sum, the City violated the Act when it failed to respond to a request within five business days and failed to give detailed explanations for the cause of its delays in producing responsive records.[4] The City subverted the intent of the Act, within the meaning of KRS 61.880(4), by delay past the five-day period provided in KRS 61.880(1), excessive extensions of time, and limiting inspection of records to one hour at a time. The City did not violate the Act when it required the Appellant to inspect records prior to obtaining copies, or when it could not provide records that do not exist.

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/ James M. Herrick
James M. Herrick
Assistant Attorney General

#252

Distributed to:

Brandy Lain
Karen Howard, Clerk
Jeffery Lovely, Esq.

[4] The Appellant asks the Office to make an additional finding that the City's violations of the Act "were willful rather than inadvertent." Although a circuit court may consider whether an agency "willfully" violated the Act for purposes of awarding costs and civil penalties under KRS 61.882(5), "this Office does not determine whether violations are 'willful.'" 22-ORD-205.