



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-254

June 3, 2026

In re: Noel Mark Botts/City of Burgin

**Summary:** The City of Burgin (“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 of receiving the request 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.

***Open Records Decision***

On April 24, 2026, Noel Mark Botts (“the Appellant”) submitted a request to the City for 12 categories of documents regarding the Burgin Code Enforcement Board (“the Board”).<sup>1</sup> However, on Monday, April 27, 2026, the City Clerk responded on behalf of the City, advising the Appellant to forward his request to the Board at [code\\_enforcement@cityofburgin.com](mailto:code_enforcement@cityofburgin.com). The Appellant promptly replied that the City is the correct public agency from which to request such records and further stated that his request “does not acknowledge a ‘code enforcement’ board.” On May 1, 2026, the City Clerk confirmed receipt of the Appellant’s request and stated that she was “currently working” on compiling the “information” and “hope[d] to have it to [him] this afternoon or Monday. It’s a lot of information requested.” On the afternoon of Monday, May 4, 2026, the Appellant initiated this appeal, challenging the City’s

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<sup>1</sup> Specifically, the Appellant requested copies of the following: (1) the Nuisance Ordinance for the City; (2) the minutes of the Board meeting “wherein #2017-09-12B dated April 20, 2026, was issued for 125 First Street, Burgin, KY.”; (3) the minutes of the Board meeting “wherein #2017-09-12B dated April 20, 2026, was issued for 116 Third Street, Burgin, KY”; (4) all nuisance citations issued by the Board in the past three years; (5) all documents and photographs of the Board regarding #2017-09-12B; (6) the complaints that resulted in #2017-09-12B; (7) minutes of the Burgin City Council meeting at which the current members of the Board were appointed; (8) the ordinance establishing the Board; (9) minutes of the City Council meeting where it created the Board; (10) the “ordinance or other authority giving only 24 hours to abate a nuisance”; (11) the documents “listing the names and contact information of all current law enforcement officers” for the City; and (12) documents “listing the name and authority for all person(s) with authority to enforce the Burgin Nuisance Ordinance.”

failure to provide him with copies of the records that he requested within five business days, as required by KRS 61.880(1), and stating the City also directed him to send his request “to another entity which may not exist and would not have the requested documents.”

Upon receiving notice of this appeal from the Office, counsel for the City advised it had provided copies of all responsive and nonexempt records to the Appellant by email dated May 8, 2026, a copy of which he attached to his appeal response.<sup>2</sup> Citing KRS 61.835 and KRS 61.878(1)(i),<sup>3</sup> the City denied the Appellant’s request for the minutes of the Board’s April 20, 2026, meeting because “the Board has not met since that meeting and the minutes are therefore still preliminary drafts until approved at the next meeting.” However, the City agreed to provide the Appellant with a copy of the requested minutes upon their approval. The City acknowledges on appeal that its April 27 and May 1 responses were timely but otherwise inadequate.

Pursuant to KRS 61.880(1), a public agency “shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays” upon receipt of a request made under the Act “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.” 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 redact or withhold the records, the agency must cite the statutory exception and explain how it applies. KRS 61.880(1); KRS 61.880(2)(c). Conversely, if the records do not exist, then the agency must affirmatively state that it does not possess any such records. *See Bowling v. Lexington–Fayette Urb. Cty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005); 24-ORD-182.

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<sup>2</sup> On May 8, the City advised the Appellant that it does not possess any records that are responsive to parts 6 (complaints that culminated in #2017-09-12B) and 11 (record listing the names and contact information of current law enforcement officers) of his request. A public agency such as the City cannot provide nonexistent records for inspection or copying. 26-ORD-049. However, because the City’s initial responses did not raise any legal arguments to justify withholding any records, the related issues are not ripe for the Office to review under KRS 61.880(2)(a).

<sup>3</sup> Pursuant to KRS 61.835, “[t]he minutes of action taken at every meeting of any . . . public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded” and those records “shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.” KRS 61.878(1)(i) exempts from disclosure “[p]reliminary drafts, notes, [and] correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.” The Office has long recognized that “unapproved minutes of [public] meetings may properly be withheld as preliminary records.” 10-OMD-168; 09-ORD-206; 96-ORD-21.

Here, the City responded promptly upon receipt of the Appellant's request but stated only that he should forward the request to the Board at its email address without further comment. Pursuant to KRS 61.872(4), "[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records." However, upon receipt of the Appellant's reply to her April 27 email, the City Clerk stated that she was "currently working" on compiling the "information" and "hope[d] to have it to [him] this afternoon or Monday. It's a lot of information requested." As of 4:00 p.m. on the following Monday, May 4, the City had not provided the requested copies to the Appellant, nor had the City properly invoked KRS 61.872(5) by providing a detailed explanation of the cause of the delay in providing the records and the specific date when the City would make the records available.

In summary, the City's April 27 and May 1 responses did not fully grant or deny the Appellant's request, nor did either response properly invoke KRS 61.872(5), which permits a public agency to delay production of the records, but only if the records are "in active use, in storage or not otherwise available." Accordingly, the City's initial responses violated the Act by failing to either provide timely access to all existing, responsive, and nonexempt records or properly invoke KRS 61.872(5).

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:

Noel Mark Botts, Appellant

Jamie Keebortz, City of Burgin, Mayor

John Wood, City of Burgin, Attorney

Angela Stewart, City of Burgin, City Clerk/Treasurer

Britney Smith, City of Burgin, Assistant City Clerk/Water Clerk