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26-ORD-302

July 10, 2026

In re: Don Franklin/Pulaski County

Summary: Pulaski County (“the County”) violated the Open Records Act (“the Act”) when it failed to give a detailed explanation of the cause for delay in providing records, as required under KRS 61.872(5). The County violated the Act when it failed to explain the nonexistence of a comprehensive plan required by law, or to prove it conducted an adequate search for such a plan, but it did not violate the Act when it provided all other requested records in its possession.

Open Records Decision

On May 1, 2026, Don Franklin (“the Appellant”) submitted six requests to the County for copies of certain records related to county planning, volunteer fire departments, and the County’s Emergency Management Director. Specifically, the Appellant requested “completed training certificates for current EM Director” in 14 categories, “documentation for current EM Director validating a minimum of two (2) years’ experience in disaster operations prior to 2025,” “documentation for current EM director validating a minimum of three (3) years’ experience in business administration prior to 2025,” “the current Pulaski County Comprehensive Plan,” “fiscal budgets submitted by each Pulaski County volunteer fire department for Fiscal Years 2024, 2025, [and] 2026,” and “contracts submitted by each Pulaski County volunteer fire department for Fiscal Years, 2025, 2025, [and] 2026.”

The County’s records custodian responded on May 7, 2026, stating he needed “more time to meet with each” volunteer fire department and “acquire each record that they may or may not have.” The custodian noted the Appellant’s awareness of certain “personal issues” that did not “allow [him] to be in the office on a full-time basis currently,”¹ but stated the records would be provided by May 20, 2026. Also on

¹ From both the County’s response to this appeal and certain communications submitted by the Appellant, it appears the records custodian was taking care of his mother, who had suffered a serious medical emergency.

May 7, 2026, the custodian emailed the Appellant and his coworkers to state he would “be getting with . . . volunteers over the coming days to get the rest of the information that [he did not] have just yet.” On May 20, 2026, the County issued a final response stating it was providing the records responsive to “the first three requests,” apparently referring to records of the EM Director’s training and experience. The custodian stated he had “searched for the other documents requested but didn’t have much luck.” 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,” but only 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.” Here, the County stated it would need eight additional business days to “acquire” some records from volunteer fire departments. However, a public agency “is responsible only for those records within its own custody or control.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)). Therefore, the scope of a request under the Act is “properly understood as limited to the [agency’s] own records.” 25-ORD-266. Although the County apparently went beyond its statutory obligations by attempting to obtain some records from other entities, an agency must independently justify its delay in providing records that are within its possession. *See, e.g.*, 26-ORD-270. Here, there is nothing to indicate that the records relating to the EM director’s qualifications and training and the County’s Comprehensive Plan were in the possession of another agency. Moreover, any budgets or contracts “submitted” to the County by volunteer fire departments would likewise be in the County’s possession. Ultimately, the agency bears the burden of proof to sustain its action. KRS 61.880(2)(c). Because the County did not explain the need for the delay in obtaining records in its own possession or establish on appeal that the delay was warranted, the County violated the Act.

Regarding the availability of records, the County advised the Appellant that it “didn’t have much luck” locating its Comprehensive Plan or contracts or budgets submitted by volunteer fire departments. On appeal, the County claims it “provided [the Appellant] with all the documentation [it] had available,” which consisted of the qualifications and training records of the EM Director. Once a public agency states affirmatively that no additional 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 is able to make a *prima facie* case that the records exist, then the agency must provide “a written explanation for their nonexistence.” *Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011) (quoting 10-ORD-078). And, if the requester has made a *prima facie* case, “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).

Here, the Appellant cites statutes that he claims indicate some of the requested records should exist. KRS 100.111(15) defines “planning unit” as “any city, *county*, consolidated local government, urban-county government, charter county government, or unified local government, or any combination of cities, counties, or parts of counties, or parts of consolidated local governments engages in planning operations” (emphasis added). Under KRS 100.183, “[t]he planning commission of each unit shall prepare a comprehensive plan, which shall serve as a guide for public and private actions and decisions to assure the development of public and private property in the most appropriate relationships.” The County has neither explained the nonexistence of a comprehensive plan nor shown that it conducted an adequate search for such a plan. Therefore, the County violated the Act.

The Appellant also cites KRS 75.050, which provides that “contracts may be made and entered into . . . between any county and any one (1) or more” volunteer fire departments “located either within the county or within an adjoining county in an area adjacent to the boundary line between the counties.” However, “a volunteer fire department is usually an independent organization disassociated from the city or county that in some instances established pursuant to the provisions of KRS Chapter 75 [but] may also be established as a separate corporate entity.” OAG 79-198. “A volunteer fire department is not normally under the jurisdiction of the county or city government except insofar as contractual agreements are concerned,” and under KRS 75.050, “a volunteer fire department is *authorized* to contract with a county for fire protection services.” *Id.* (emphasis added). The Appellant has not cited any authority for the proposition that volunteer fire departments are *required* to contract with the County. Accordingly, the Appellant has not made a *prima facie* case that the County possesses contracts with any volunteer fire departments. For the same reason, the Appellant has not made a *prima facie* case that any volunteer fire departments have submitted “fiscal budgets” to the County. Therefore, the Office cannot find that the County violated the Act when it did not provide such records to the Appellant.

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/ Zachary M. Zimmerer
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Distributed to:

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