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26-ORD-457

October 14, 2026

In re: Howard Froelicher/Pendleton County Department of Planning & Zoning

Summary: The Pendleton County Department of Planning & Zoning ("the Department") violated the Open Records Act ("the Act") by failing to send a written response within five business days of receiving the request as required by KRS 61.880(1).

Open Records Decision

On August 29, 2026, Howard Froelicher ("the Appellant") submitted a request to the Department for copies of seven categories of "existing Planning/Zoning records that identify the physical footprint and development team for the proposed senior/affordable-housing redevelopment at the former Falmouth School Center, 500 Chapel Street, associated with New Foundations Transitional Living and later Highland Hills Holdings." On September 15, 2026, the Appellant initiated this appeal challenging the Department's failure to respond to his request.

In response, the Pendleton County Attorney responded on the Department's behalf, acknowledging that the Department failed to respond within five business days of receiving the Appellant's request. Because of "staffing issues," the Department did not learn of the request until September 21, 2026, and, upon learning of it, "promptly responded within 48 hours" by providing the Appellant with copies of all existing, responsive records within the possession, custody, or control of the Department.[1]

[1] The Department attaches two emails dated September 23, 2026, from its Department Administrator to the Appellant, in which it responds to separate requests from the Appellant for 10 categories of records ("Planning & Zoning-side records underlying the public presentation of the proposed Verti-Grow project at 500 Chapel Street, including the February 2019 Falmouth Outlook coverage and the Stage 1 presentation") and six categories of records (including the Stage 1 and Stage 2 applications, floodplain materials, the applicable zoning ordinance, etc.), respectively, but does not appear to address the August 29 request, specifically. Because the Appellant filed this appeal based solely upon the Department's failure to respond timely upon receipt of his August 29 request, issues

Upon receipt of a request, a public agency "shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays," 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." KRS 61.880(1). A public agency may extend the deadline for production of the records, but only if the records are "in active use, in storage or not otherwise available" and the agency provides "a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will be available for inspection." KRS 61.872(5).

Here, the relevant facts are not in dispute. The Department does not deny receiving the Appellant's August 29 request; nor does the Department deny that it failed to send a written response within five business days of receiving it, as KRS 61.880(1) requires. The Department did not comply with KRS 61.880(1) or attempt to invoke KRS 61.872(5). By failing to respond within five business days of receiving the Appellant's request, and either comply with it, deny it, or properly invoke KRS 61.872(5), the Department violated the Act. *See* 26-ORD-232.

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

regarding the merits of any response(s) that he subsequently received from the Department are not ripe for the Office to review in this appeal.

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Distributed to:

Howard Froelicher, Appellant
Brett Price, Administrator, Pendleton County Planning & Zoning
Stacy S. Sanning, Pendleton County Attorney
Janet Scanlon, Chairperson, Pendleton County Joint Planning Commission