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-458

October 14, 2026

In re: Howard Froehlicher/City of Falmouth

Summary: The City of Falmouth ("the City") did not violate the Open Records Act ("the Act") when it did not provide records that do not exist.

Open Records Decision

On September 8, 2026, Howard Froehlicher ("the Appellant") submitted an eight-part request to the City for records related to the finances of a particular property. In response, the City identified responsive records and otherwise informed the Appellant that it does not possess records responsive to his request. This appeal followed.

The Appellant explains he only asks for the Office to "determine whether the City has established that it conducted an adequate search reasonably calculated to locate the requested records."

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. 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. Here, the Appellant has not attempted to make a *prima facie* case that any records responsive to his questions are or should be in the possession, custody, or control of the City. The City is therefore not required to prove that its search was adequate. Accordingly, the Office cannot find that the City violated the Act.

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

Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Howard Froelicher, Appellant
Megan Crouch, City of Falmouth, City Clerk
Sabrina Hazen, City of Falmouth, Mayor
Steve Doan, City of Falmouth, City Attorney