COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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26-ORD-460

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 15, 2026, Howard Froehlicher ("the Appellant") submitted a request to the City seeking six categories of records related to the "Verti-Grow project at 500 Chapel Street" created between 2018 and 2020. In response, the City stated that it possessed no responsive records for each part of the request. This appeal followed.

The Appellant explains he only asks for the Office to determine whether "the City conducted and adequately established a search reasonably calculated to locate the specifically identified 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 by conducting an inadequate search.

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
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