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26-ORD-480

October 28, 2026

In re: Melissa Shreve Bebout/City of Morganfield

Summary: The City of Morganfield ("the City") did not violate the Open Records Act ("the Act") by declining to provide copies of records to a county resident prior to her onsite inspection of those records under KRS 61.872(2)(a), KRS 61.872(3), and KRS 61.874(1). Likewise, the City did not violate the Act by denying parts of a request seeking records that are not within the City's possession, custody, or control.

Open Records Decision

On August 26, 2026, Melissa Shreve Bebout ("the Appellant") submitted a request to the City for electronic copies of the following public records: (1) "Approved minutes of all Morganfield City Council meetings from January 1, 2019, through the date of this request," including regular, special, and emergency meetings; (2) "Agendas for those meetings[,] if maintained by the City"; and (3) "Meeting packets or other collections of documents routinely provided to City Council members in preparation for those meetings[,] if such records are maintained by the City." The City responded timely on August 31, 2026, and provided the Appellant with copies of the approved minutes responsive to part 1 of the request and the corresponding agendas responsive to part 2 of the request. Regarding part 3, the City advised that "meeting packets" are currently maintained in hard copy, *i.e.*, paper format. Citing KRS 61.874, the City stated that if the Appellant wanted copies of those records, it would provide them upon receipt of the copying fee of 10 cents per page; the City estimated that each packet consisted of approximately 35 pages. The City also noted that, if the Appellant preferred to view the meeting packets in person during regular business hours, it would not impose any fees for the Appellant's in-person inspection. On September 2, 2026, the Appellant confirmed receipt of the records provided via email and stated that she would like to inspect hard copies of the meeting packets on September 11, 2026, but her "willingness to inspect the records in person next Friday

should not be construed as withdrawing my request for electronic copies of responsive records that already exist electronically."[1]

On September 3, 2026, the City confirmed receipt of the Appellant's email and stated that, consistent with KRS 61.872(3)(a), it would provide "suitable facilities for inspection" and would not charge any fees to conduct onsite inspection of the records. Citing KRS 61.874(2)(a), the City explained that "approved minutes and meeting agendas" were provided electronically because it maintains those records in electronic format. However, the meeting packets "are a separate matter" because the City compiles and maintains those records "only in paper form." Under KRS 61.874(2)(a), the City advised, where a public agency "currently maintains records in hard copy format, those records are to be copied in standard hard copy format" and the agency is "not required to convert hard copy records to electronic formats." Regarding the underlying materials, the City clarified that "certain individual items that were printed into the packets may exist in electronic form within the City's systems," but the records "are not maintained electronically as assembled, complete packet compilations. . . . The existing record responsive to your request for the packets is the paper packet itself, which is available to you for inspection and for copying."[2] In subsequent email correspondence, the City advised the Appellant it would make the requested meeting packets available for inspection as of 8:30 a.m. on September 11.

However, on September 10, 2026, the Appellant submitted a new request for electronic copies of 11 categories of "public records concerning the discontinuation of the City's tourism tax, the dissolution or disbandment of the tourism board/commission, and the disposition of tourism-related funds remaining at or after that time."[3] The Appellant requested to receive copies of "responsive records

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[1] The Appellant stated that she would also like "to clarify the format in which these records are maintained. If any of the requested meeting packets, attachments, claims lists, invoices, financial reports, or other materials contained in the packets already exist in electronic form, please provide those records electronically rather than limiting production to an in-person inspection of paper copies."

[2] Alternatively, the City advised that if the Appellant preferred to have it "scan the responsive paper packets and provide them electronically," it may "at its discretion provide the requested format and recover staff costs as well as any actual costs incurred" under KRS 61.874(3). The City asked the Appellant to let it know if she wanted it "to consider scanning the packets on that basis . . . and we will provide an estimate of the associated staff and reproduction costs for your approval before any work is performed."

[3] The Appellant requested: (1) "[a]ll ordinances, resolutions, City Council minutes, motions, votes, correspondence, legal opinions, or other records concerning the decision to discontinue, repeal, suspend, or otherwise cease collection of the tourism tax"; (2) "[a]ll ordinances, resolutions, City Council minutes, motions, votes, correspondence, legal opinions, or other records concerning the dissolution, disbandment, termination, or cessation of operations of the tourism board or commission"; (3) "[r]ecords establishing the effective date on which collection of the tourism tax ceased and the effective date on which the tourism board or commission ceased operations"; (4) "[t]he final accounting, financial statements, bank statements, general ledger reports, treasurer's reports, or other records showing the balance of tourism funds held at the time the tourism board or commission ceased

electronically in their existing electronic format where available." Specifically, the Appellant requested "the existing electronic reports, spreadsheets, ledger exports, or other electronic records rather than printed copies where such records exist electronically." The City responded timely via email on September 17, 2026, attaching copies of "Council meeting minutes" and Ordinance No. 574 in response to parts 1 and 2 of the request and Ordinance No. 574 in response to item 3. Regarding parts 4 and 11, the City advised that such records "are kept in paper form and can be made available for your review at City Hall." The City also stated, "There are none," in response to part 10 of the request and explained, regarding parts 5 to 9 that, "Since the dissolving of the tourism board and repealing the restaurant tax, there have been no funds transferred to the City."

Later that day, the Appellant confirmed receipt of the City's response but stated that it "raises two additional issues that require clarification." The Appellant then asked several questions related to a City restaurant tax.

The City responded, advising that under the Act, "public agencies are only required to supply existing public records, not to answer specific questions. For the records that you have requested, as stated [previously], we have them in paper form and [they] can be made available for your review at City Hall." In response, the Appellant acknowledged "that the [Act] does not require the City to create answers or compile a new list" but further asked "that the paper records [the City] offered for inspection include all responsive records in the City's custody[.]" On September 29, 2026, the City advised the Appellant that it would make the records available on "Thursday or Friday of this week after 8:30 a.m. The fee is $0.10 per 8.5 x 11 copy." Shortly thereafter, the Appellant asked the City to "confirm which of my requested

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operations"; (5) "[r]ecords showing the disposition of all tourism-related funds remaining after the tourism board or commission ceased operations, including the date and amount of each transfer or deposit and the City fund, bank account, general ledger account, or other account into which the money was transferred or deposited"; (6) "[r]ecords showing any tourism-related funds that were transferred or deposited into the City of Morganfield General Fund, including journal entries, deposit records, transfer records, general ledger entries, account numbers, fund codes, and revenue classifications documenting those transactions"; (7) "[r]ecords showing all subsequent transfers, appropriations, encumbrances, or expenditures of the tourism-related money after it was transferred or deposited into a City account or the General Fund"; (8) "[a]ll invoices, purchase orders, claims, vouchers, checks, electronic payments, journal entries, or other supporting documentation reflecting expenditures made from those tourism-related funds after they were transferred or deposited into City accounts"; (9) "[r]ecords identifying any portion of those funds subsequently used, transferred, appropriated, or designated for the Downtown Mural Project or any other downtown, tourism, economic-development, beautification, or promotional project"; (10) "[a]ny correspondence, memoranda, legal opinions, communications with the Kentucky Department for Local Government or other governmental entities, auditor communications, or other records addressing whether the remaining tourism funds could lawfully be transferred to, deposited into, or expended through the City's General Fund"; (11) "[a]ny audit reports, audit workpapers provided to the City, management letters, findings, recommendations, or City responses addressing the tourism board/commission, tourism tax revenues, dissolution of the tourism board/commission, or disposition of the remaining tourism funds."

records will be available Thursday or Friday and the total number of pages and estimated cost." The Appellant also reiterated her preference to receive the records, including financial records, in electronic format. When the City did not immediately respond, the Appellant initiated this appeal on September 29, stating that she is not asking the Office "to determine where the tourism money is located or to resolve the underlying financial questions. I am asking for review of the City's compliance with its obligations under the [Act] in responding to requests for the existing public records that would document those matters."

Upon receipt of this appeal, the City reiterated that the monthly City Council meeting packets "are compiled from various resources and are maintained in paper format. It would not be feasible for the city to go back nearly 8 years to randomly pull the items that might be in electronic format, when we know the full accurate packet is in paper format." Regarding the Appellant's request for certain records and information regarding the "former tourism board, restaurant tax and disposition of tourism funds," the City reaffirms that it has provided the Appellant with "all the records that are in the City's possession. We supplied Ordinance no. 574, council meetings minutes approving this ordinance, and have made copies of the general ledger and bank statements, which she has yet to pick up. (see attached emails from September 30, October 1, and October 8)."[4] In summary, "the City does not possess any of the other records that she is requesting."

When a public agency receives a request for public records, that agency must decide within five business days "whether to comply with the request" and notify the requester, in writing, "of its decision." KRS 61.880(1). If the requested records exist but a statutory exception applies to justify withholding the records, or portions thereof, the agency must cite the statutory exception and explain how it applies to records or portions thereof being withheld. KRS 61.880(1). Conversely, if the records do not exist, then the agency must affirmatively state that such records do not exist following its diligent search. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the City responded within five business days of receiving the Appellant's August 26 and September 10 requests, as required by KRS 61.880(1), and provided her with copies of responsive records that existed in electronic format electronically. Because the City did not withhold any existing, responsive records in either instance, the remaining questions are (1) whether the City erred in requiring the Appellant to conduct onsite inspection of any existing records that do not currently exist in electronic format prior to receiving copies and (2) whether the City violated the Act in denying parts of the September 10 request asking for certain records not within the City's possession, custody, or control.

[4] Because the parties engaged in this additional correspondence from September 30 (following receipt of this appeal) to October 8, 2026, after the Appellant initiated this appeal, issues raised concerning that correspondence are not ripe for the Office to review under KRS 61.880(2)(a).

Under KRS 61.872(2)(a), "[a]ny resident of the Commonwealth shall have the right to inspect public records.[5] Inspection of public records on the agency's premises is the basic right provided under the Act. 25-ORD-222. "*Upon inspection*, the applicant shall have the right . . . to obtain copies of all public records not exempted by the terms of KRS 61.878." KRS 61.874(1) (emphasis added). Thus, under KRS 61.874(1), a requester's right to obtain copies of records is conditioned on his first inspecting them. *See*, *e.g.*, OAG 76-375 (finding that "[t]he right to have copies of records is ancillary to the right of inspection and does not stand by itself," and therefore, "[i]f a person has not inspected the records he desires to copy[,] there is no requirement that copies of any records must be delivered to him"); OAG 82-629 (finding that the Act "does not contemplate that a public agency shall send requested records to a person who has not inspected them"); 25-ORD-222.

In 1992, the General Assembly enacted KRS 61.872(3), which provides that public records may be inspected either "[d]uring the regular office hours of the public agency" or "[b]y receiving copies of the public records from the public agency through the mail." The second alternative, however, is not available to all requesters. Rather, "[t]he public agency shall mail copies of the public records to a person *whose residence or principal place of business is outside the county in which the public records are located* after he or she precisely describes the public records which are readily available within the public agency." KRS 61.872(3)(b) (emphasis added). Thus, a requester who lives in the county where the records are located, such as the Appellant, is not entitled to receive copies of the requested records without first conducting onsite inspection of the records. *See Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008) (finding that "KRS 61.872(3)(b) seemingly applies when someone residing outside the county in which the public records are located desires to receive copies of the public records through the mail," not a person "in the same county as the records kept by the custodian"); *see also* 97-ORD-46 (finding that "[a] requester who both lives and works in the same county where the public records are located may be required to inspect the records prior to receiving copies"); 92-ORD-1620 (finding that KRS 61.872(3)(b) "reflects a concern that persons residing outside the county where the records are maintained should not be compelled to travel great distances in order to inspect those records"); 25-ORD-222; 18-ORD-068; 16-ORD-242. For this reason, the City did not violate the Act by requiring the Appellant to conduct onsite inspection of any existing records that may be responsive to her August 26 and September 10 requests before providing her with copies of those records. *See* 26-ORD-456.

[5] Whereas KRS 61.872(2) merely requires a requester to "describ[e]" the records that he wishes to access by onsite inspection, KRS 61.872(3)(b) requires the requester to "precisely describe" the records if he wishes to receive copies. "[N]othing in KRS 61.872(2) contains any sort of particularity requirement." *Commonwealth v. Chestnut*, 255 S.W.3d 655, 661 (Ky. 2008).

Under KRS 61.874(2)(a), "[n]onexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, *where the agency currently maintains the records in electronic format*" (emphasis added). However, nonexempt public records used for noncommercial purposes "shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. *Agencies are not required to convert hard copy format records to electronic formats*." KRS 61.874(2)(a) (emphasis added). In construing this provision, the Office has consistently held that "*if* nonexempt records exist in both standard electronic and standard hard copy format, the public agency must permit inspection of and copying in the format requested by the requester." 99-ORD-12 (emphasis added); 18-ORD-018; 07-ORD-038; 06-ORD-147; 02-ORD-65. Conversely, if the responsive and nonexempt records exist in hard copy format only, a public agency is only required to permit inspection and copying of the records in that format. 18-ORD-018.

The City has repeatedly stated that responsive "meetings packets" responsive to part 3 of the Appellant's first request exist in hard copy format only, unless the City scans those records prior to providing copies which, under KRS 61.874(3), the City may "at its discretion," opt to do "and recover staff costs as well as any actual costs incurred." In other words, the City has discretion whether "to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual." KRS 61.874(3); *see* 25-ORD-373; 19-ORD-026. Regarding any records or information that are maintained electronically, a public agency is permitted to deny the request unless it has a "pre-existing query, filter, or sort capable of extracting the records as requested." 25-ORD-373; 21-ORD-178 (quoting 12-ORD-028). In the absence of any basis to dispute the City's representation that it does not maintain electronically the records characterized as "meeting packets" and those responsive to parts 4 and 11 of the Appellant's September 11 request, the Office finds the City did not violate the Act by declining to exercise its discretion to provide those records in a nonstandardized format or to tailor the format of those records to satisfy the Appellant's requests.

Regarding parts 5 to 10 of the Appellant's September 11 request, the City has advised that it has no responsive records within its possession, custody, or control. Once a public agency states affirmatively that certain records do not exist, the burden shifts to the requester to make a *prima facie* case that the requested records do or should exist. *See Bowling*, 172 S.W.3d at 341. If the requester makes a *prima facie* case that the records do or should exist, then the public 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's bare assertion that a public agency "possesses a requested record is insufficient to establish a *prima facie* case that the agency, in fact, possesses

it." 25-ORD-063; *see*, *e.g.*, 26-ORD-087; 22-ORD-040. Rather, to make a *prima facie* case that the agency possesses or should possess the requested records, "the requester must point to some statute, regulation, or factual support for this contention." *Id.*; *see*, *e.g.*, 26-ORD-087; 21-ORD-177; 11-ORD-074. "Merely asserting that additional records exist does not establish a *prima facie* case that they do or that an agency has failed to conduct an adequate search." 24-ORD 023; *see*, *e.g.*, 26-ORD-233; 23-ORD-042. Because the Appellant has not made a showing that the City possesses additional, responsive records,[6] the Office cannot find the City violated the Act when it did not provide nonexistent records for inspection or copying.

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:

Melissa S. Shreve Bebout, Appellant
Randy Greenwell, Mayor, City of Morganfield
Scott Clements, City Administrator, City of Morganfield
Lindsay Durbin, City Attorney, City of Morganfield

[6] The Office has consistently recognized that it is unable to resolve factual disputes between the parties to an appeal under KRS 61.880(2)(a), such as disputes regarding whether the public agency has provided all existing records responsive to a request, and whether the responsive records should include additional content. *See, e.g.*, 25-ORD-114; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81.