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26-ORD-504

November 5, 2026

In re: Joe Whitaker/Madison County Department of Planning and Development Services

Summary: The Madison County Department of Planning and Development Services ("the Department") violated the Open Records Act ("the Act") when it failed to cite an exemption to justify its withholding of a rezoning index. The Department also violated the Act when it did not respond to all parts of the Appellant's request. The Department did not violate the Act when it referred the Appellant to the custodian of the GIS attribute data or when it did not provide planning commission records it does not possess.

Open Records Decision

On August 17, 2026, Joe Whitaker ("Appellant") submitted a request to the Department seeking (1) a record "listing all approved Zoning Map Amendments (rezonings) within Madison County approved between January 1, 2015, and August 1, 2026"; (2) "GIS Attribute data"[1]; and (3) "[c]opies of any annual reports or administrative tally sheets compiled by the Planning Commission or staff from 2015 through 2025 summarizing total acres converted by zoning classification" Regarding requests 1 and 2, the Appellant asked that they be provided in "their native digital format." In a timely response, the Department provided a link to the ordinances of the Madison County Fiscal Court and stated that it does not possess GIS records and that those records could be obtained from the Madison County GIS Department.

The Appellant then submitted a "deficiency notice" to the Madison County Fiscal Court complaining that the Department had not provided him with an electronic database of approved zoning map amendments or GIS attribute tables. The

[1] "GIS" refers to geographic information system.

Appellant also complained that the Department had referred him to the County GIS Department and that the Department had not responded to the request for "reports or administrative tally sheets compiled by the Planning Commission."

In response, the Department provided the Appellant with a photograph of an excel document it possesses which indexes rezonings dated between 2015 and 2026. The Department also explained that the index is a "working draft document" which "was created and used for informational purposes only" and was not "intended to serve as a comprehensive or authoritative record of zoning changes." Next, the Department maintained that the County GIS Department possesses the GIS records the Appellant requested and provided the contact information of its GIS Coordinator. The Department did not address the request for "annual reports or administrative tally sheets compiled by the Planning Commission." This appeal followed.

Upon receiving a request to inspect public records, a public agency must determine within five business days whether to grant the request or deny it. KRS 61.880(1). If the agency chooses to deny the request, it "shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." A public agency cannot simply ignore portions of a request. *See, e.g.*, 24-ORD-182; 21-ORD-090. If the records exist but a statutory exception applies that permits the agency to withhold the records, the agency must cite the statutory exception and explain how it applies under KRS 61.880(1). *See also* KRS 61.880(2)(c).

To start, the Department's initial response merely provided the Appellant with a link to a webpage containing all of Madison County's enacted ordinances, some of which approved zoning changes. That response did not acknowledge that the Department possesses an index of the County's rezonings nor did it cite an exemption authorizing it to withhold that index. The initial response also did not respond at all to the Appellant's request for "annual reports or administrative tally sheets compiled by the Planning Commission." Accordingly, the Department's initial response to the Appellant violated KRS 61.880(1) by failing to explain why it was withholding responsive records and failing to address each part of the request.

Next, regarding the Department's production of its rezoning index, the Appellant complains that he was provided with an image of the excel index rather than the underling excel document itself. In response, the Department argues that this constitutes a request for records in a nonstandardized format which it has discretion to deny.

KRS 61.874(2)(b) defines "standard format" for an electronic record as "a flat file electronic American Standard Code for Information Interchange (ASCII) format," and further provides that "[i]f the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request." Thus, any format other than ASCII or the format in which the agency maintains the record is a nonstandardized format.

Under KRS 61.874(3), "[i]f a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred." Accordingly, a public agency also has discretion to refuse to produce a record in a nonstandard format when it does not maintain the record in that format. However, here, there is no dispute that the Department maintains the index in an excel format. Because it maintains the index in the excel format, a request for the record in that format is not a "nonstandardized request." As such, the Department may only withhold that excel document if it is exempt from disclosure pursuant to one of the Act's exceptions. The Department has not cited any exception authorizing it to withhold the excel rezoning index and therefore violated the Act.

Next, the Appellant complains that the Department referred him to the County's GIS Department as the custodian of the GIS attribute records instead of retrieving those records on his behalf. However, "[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records." KRS 61.872(4). Here, the Department satisfied the requirement of the Act by informing the Appellant that the GIS attribute Data is possessed by the County GIS Department and providing him the contact information of a member of that agency. Thus, the Department did not violate the Act when it referred the Appellant to the custodian of the requested GIS records.

Finally, on appeal, the Department states that it does not possess the "annual reports or administrative tally sheets compiled by the Planning Commission." 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 the Department possesses the planning commission records. Accordingly, the Office cannot find that the Department violated the Act by not providing records it does not possess.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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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