



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**22-ORD-227**

October 25, 2022

In re: Gaye Ballard/City of Bardstown

**Summary:** The City of Bardstown (“the City”) violated the Open Records Act (“the Act”) when it failed to cite an applicable exemption and explain how it applied to a requested record. However, the City did not violate the Act when it withheld records pertaining to an audit as preliminary because the audit has not yet been completed.

***Open Records Decision***

Gaye Ballard submitted a request to the City for “a copy of the 2022 annual financial statement.” In a timely response, the City stated “[t]he statement for the fiscal year ending June 30th, [sic] 2022 will not be available until it has been completed and audited no later than March 1, 2023 as required by KRS 91A.040.” This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant or deny the request. KRS 61.880(1). If the agency denies 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.” *Id.* Here, the City did not cite any exemption to the Act or explain how it applied. Accordingly, its initial response violated the Act.

On appeal, however, the City explains that the financial statement is preliminary because the audit has not occurred. *See* KRS 61.878(1)(i) (exempting from inspection preliminary “drafts”). Under KRS 91A.040, the audit must occur no later than March 1, 2023. Thus, the financial statement remains preliminary until the audit is completed and presented to the City’s legislative body as required under KRS 91A.040(7)(e). *See, e.g.*, 08-ORD-094 (upholding the denial of financial statements as preliminary until the audit is formally presented). Accordingly, the

City did not violate the Act by withholding the financial statement as preliminary at this time.

A party aggrieved by this decision may appeal it by initiating 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 e-mailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
Attorney General

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

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Distributed to:

Gaye Ballard  
Audrey L. Hayden  
Gary Little