

JEFFREY J. OTIS

**Attorney at Law
506 Foster Avenue
Florence, KY 41042
(859) 760-4196 - Telephone
Email: objlaw@yahoo.com**

June 13, 2025

Hon. Russell Coleman
Attorney General for the Commonwealth of Kentucky
Attn: Hon. Zach Zimmerer
700 Capitol Avenue
Suite 118
Frankfort, KY 40601

In re: 25-ORD-140 dated May 28, 2025 in reference to an appeal filed under ***Log #: 202500185***

Dear Mr. Zimmerer:

I am filing this response to 25-ORD-140 issued on or about May 28, 2025. Please consider this response as a humble request for your office to reconsider the decision rendered and as a request to consider additional facts and circumstances around the appeal. As grounds for the City of Union's request to reconsider and to provide a better understanding of the referenced facts and circumstances, the City states as follows:

The City states that it has met all the requirements of the Kentucky Open Records Act with respect to all eight (8) of Mr. Garner's open record requests, not just the one subject to this decision. Mr. Garner, is a former City Commissioner for Union, Kentucky and is well aware of the great efforts the City made to comply with all of his requests, including the subject request. The City, through its venerable City Clerk, made every good faith effort to timely fulfill every one of Mr. Garner's eight (8) open records requests and did so within the confines of the law and to the best of her ability.

On page two (2) of the Attorney General's decision, it is stated that the City of Union did not grant or deny Mr. Garner's request for phone logs within five business days of receiving Mr. Garner's open records request. This is inaccurate. The City of Union did respond to Mr. Garner within five (5) business days and in that response advised Mr. Garner that the City would have to collect the records. The decision then states, "instead, it (the City of Union) stated that it would reach out to [the] Mayor and Commissioners to request phone logs" and that it was this response

that was in violation of *K.R.S. 61.872(5)*. This response to Mr. Garner from the City Clerk obviously reflected that the City Clerk was going to provide the requested call logs to Mr. Garner but that the call logs were not in her possession. Please see the communication history between Mr. Garner and the City Clerk attached hereto and incorporated herein by reference as Exhibit "A." While the City Clerk did not directly state that she was granting Mr. Garner's request, the plain meaning of her language would lead an average, reasonable person of ordinary prudence to believe that the City Clerk was granting Mr. Garner's request. With all due respect, this is not a violation as stated in the decision. More to the point, the City Clerk did acquire the Mayor's call log and the Commissioners' call logs and promptly provided them to Mr. Garner as soon as she acquired copies of them. The City Clerk simply could do no more than that which she did. The subject request was for records not in the City's possession yet the City Clerk tracked them down in a timely manner and provided them to Mr. Garner.

The very next paragraph of the decision that begins with "On appeal, ...two additional pages of phone records were provided to the City Clerk and then provided to the Appellant." This paragraph goes on to state "additional pages of phone records...violated the Act by its initial failure to perform an adequate search." This portion of the decision is still referring to the call logs that the City Clerk had to track down and acquire from the Mayor and City Commissioners. What the decision references in this particular paragraph is that after the City Clerk initially produced call logs to Mr. Garner, another two pages of call logs were produced a few days later. What should be noted here is that the two pages of call logs that were produced after the initial production, were not in existence as of the date of the initial production. The Commissioner's cell phone billing cycle prevented these last two pages from being available on the date of the initial production of documents to Mr. Garner. There can be no determination that the City Clerk's search was inadequate if all existing documents at the time of production were provided. It is unjust to label the City's search as inadequate when the City turned everything that it had in its possession over to Mr. Garner.

The final violation of the Open Records Act referenced in the decision involves the City's redaction of the same call logs referenced herein. The decision states that the call logs provided had been heavily redacted. The decision further states that "the City has not cited any exemptions authorizing the redactions...". The City respectfully objects to the decision's determination that the City had to cite to a statute authorizing the redactions. As the City noted in its response to the appeal, the Mayor and the City Commissioners use their own private cell phones and the call logs requested were from these same private cell phones. Private cell phones and their subsequent call logs are not a public record. If something is not a public record, then first, there is no need to turn the record over, and second, there is no exemption for the redaction or withholding of the record to cite to. The City cannot exempt a record that is not public. In this matter the City, for the sake of full transparency, produced the cell phone records (with only personal records and attorney-client records redacted) despite not having to do so. The City did not cite a statutory exemption for the redacted records because there is no reason to claim an exemption for a record that is not public.

As previously stated in the appeal, Mr. Garner has intimated that there has been a conspiracy or multiple misdeeds by Mayor Larry Solomon, the City Attorney, and other Commission members since he was not appointed as City Commissioner. Additionally, Mr. Garner has made it known he will do whatever he needs to do to disrupt Mayor Solomon. To try and calm the situation, the City has been, and continues to be, transparent in all matters wherever possible. Including turning over records to Mr. Garner that are arguable private rather than public.

As has been previously stated, Mr. Garner's eight (8) open record requests, (including the one referenced in 25-ORD-140) have been very time-consuming and distracting to the normal course of city business. The City would have been well within its rights to deny some of Mr. Garner's requests but chose to honor the requests for the sake of full transparency and in good faith. Furthermore, the City went beyond its legal responsibilities in providing private cell phone records to Mr. Garner.

For the future (effective July 1, 2025), the City has decided to issue the Mayor and Commissioners city owned cell phones for all city business to be discussed on these phones. The City Clerk will be in possession of all call logs and records for any future open records requests. This will eliminate the use of private cell phones in discussing city business.

For all the reasons stated above, the City of Union requests that the Attorney General's office reconsider the decision rendered in 25-ORD-140 based upon the clarification of the facts and circumstances stated herein. If there are any questions, comments, or concerns, please feel free to contact me at objlaw@yahoo.com or at (859) 760-4196. Thank you very much.

Sincerely,

/s/ Jeffrey J. Otis
Jeffrey J. Otis
Attorney at Law

CC: Mayor Solomon
Hon. Greg D. Voss
City Commissioners
City Clerk
Brian Garner