

NO.

JEFFERSON CIRCUIT COURT  
DIVISION \_\_\_\_\_  
JUDGE \_\_\_\_\_***ELECTRONICALLY FILED***INSTITUTE FOR JUSTICE  
901 N. Glebe Road  
Arlington, VA 22203

PLAINTIFF

v.

**COMPLAINT**BRANDON COAN, in his capacity as  
Louisville Metro Councilmember  
Metro Council District 8  
601 W. Jefferson Street  
Louisville, KY 40202

DEFENDANTS

PAT MULVIHILL, in his capacity as Louisville  
Metro Councilmember  
Metro Council District 10  
601 W. Jefferson Street  
Louisville, KY 40202SCOTT REED, in his capacity as Louisville  
Metro Councilmember  
Metro Council District 16  
601 W. Jefferson Street  
Louisville, KY 40202BARBARA SEXTON-SMITH, in her capacity  
as Louisville Metro Councilmember  
Metro Council District 4  
601 W. Jefferson Street  
Louisville, KY 40202

Plaintiff Institute for Justice, by counsel, and for its Complaint against Defendants

Louisville Metro Councilmembers, as defined below, in this action states as follows:

**INTRODUCTION**

1. This is a civil action for a declaratory action, injunctive relief and statutory damages brought by the Institute for Justice ("IJ" or "Plaintiff"), a non-profit that has represented

{IJ105942.DOCX}

certain food-truck operators in Louisville, based on the non-compliance of certain Louisville Metro Councilmembers violation of Kentucky's Open Records Act, KRS 61.870 to KRS 61.844 (the "Open Records Act") and the Kentucky Attorney General's Open Records Decision, 19-ORD-084, issued on May 9, 2019 and attached hereto as **Exhibit A**.

2. Prior to filing this lawsuit, IJ challenged the constitutionality of Louisville-Metro's 150-foot proximity restriction, which made it illegal for food trucks to vend within 150-feet of restaurants that sold similar food absent those restaurants' permission. In response to the lawsuit, Louisville Metro repealed the restriction and signed a Consent Decree that required Louisville Metro not to discriminate against food trucks or otherwise treat them differently than other commercial vehicles.

3. Several months after entering into the Consent Decree, though, four Councilmembers proposed a new vending ordinance that would stifle food truck operators. IJ sent open records requests to the four Councilmembers, who then refused to turn over any documents. After the Kentucky Attorney General found that refusal to be improper in part, each Councilmember still refused to produce any documents. This lawsuit seeks to enforce the Attorney General's opinion and obtain the requested documents.

### **PARTIES**

4. Plaintiff Institute for Justice ("IJ") is a foreign 501(c)(3) non-profit corporation with its principal office based out of Arlington, Virginia.

5. Arif Panju is a resident of Texas and is a Managing Attorney at the Institute for Justice.

6. Defendant Brandon Coan ("Coan") is a Louisville Metro Councilmember and as an individual member of a municipal council is a "public agency" under KRS 61.970(1)(a) for purposes of the Open Records Act.

7. Defendant Pat Mulvihill ("Mulvihill") is a Louisville Metro Councilmember and as an individual member of a municipal council is a "public agency" under KRS 61.970(1)(a) for purposes of the Open Records Act.

8. Defendant Scott Reed ("Reed") is a Louisville Metro Councilmember and as an individual member of a municipal council is a "public agency" under KRS 61.970(1)(a) for purposes of the Open Records Act.

9. Defendant Barbara Sexton-Smith ("Sexton-Smith") is a Louisville Metro Councilmember and as an individual member of a municipal council is a "public agency" under KRS 61.970(1)(a) for purposes of the Open Records Act.

10. A courtesy copy of this Complaint will be provided to Hon. Andy Beshear, Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky, 40601-3449.

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over this action to grant the relief sought herein pursuant to KRS 61.880(5)(a) and KRS 61.882.

12. Venue over this action lies with this Court pursuant to KRS 61.882 because the public records at dispute in this action are maintained in Jefferson County, Kentucky.

### **FACTS IN SUPPORT OF RELIEF REQUESTED**

13. On June 18, 2018, Louisville Metro entered into the Consent Decree in response to a lawsuit filed by IJ on behalf of its clients that operate food-trucks in the Louisville Metro in the United States District Court of the Western District of Kentucky. *See also, King v. Louisville/Jefferson Cty. Metro Gov't Civ. No. 3:17-cv-00390-DHL-CHL [ECF No. 25]. See Exhibit B.* The Consent Decree, among other things, provided that Louisville Metro would not unconstitutionally discriminate against food-truck vendors and, for the next five years, would

notify IJ before promulgating an administrative rule or ordinance addressing food-truck operations.

14. On or around October 10, 2018, Louisville Metro Councilmembers Coan, Mulvihill, Reed and Sexton-Smith (collectively referred to as the "Councilmembers" or individually as a "Councilmember") proposed an ordinance O-347-18 that, among other things, regulates food-truck operations.

15. On or around October 11, 2018, IJ mailed a letter to Mayor of Louisville, Gregory Fischer (the "Letter"), indicating that the proposed ordinance O-347-18 would violate the Consent Decree that Louisville/Jefferson County Metro Government ("Louisville Metro") had just entered. *See* Letter attached as **Exhibit C**.

16. Plaintiff received no response to the Letter.

17. On or around November 1, 2018, Arif Panju, on behalf of IJ, requested from each Councilmember copies of certain records relating to proposed Louisville Ordinance O-347-18 (the "IJ Open Records Request") under the Open Records Act. *See* IJ Open Records Request, attached as **Exhibit D**.

18. The IJ Open Records Request specifically sought the following:

1. Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18.
2. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
3. Copies of all documents concerning (or referencing) the Louisville Downtown Partnership containing any of [those terms].
4. Copies of all documents and communications to or from the Louisville Downtown Partnership (including to or from any of its representatives or employees) containing any of [those terms].

5. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/ or installed by Louisville Metro in 2017.

*See Exhibit A, p. 2.*

19. On or around November 12, 2018, the Councilmembers untimely responded to IJ's Open Records Request stating that the responsive records would be available on December 7, 2018. *See Exhibit A, pp 2-3.*

20. The Councilmembers did not respond to IJ's Open Records Request on December 7, 2018. Instead, on December 7, 2018, the Metro Council Clerk denied IJ's Open Records Request in its entirety stating that under the "electronic search utilizing the search terms you provided, approximately 8,300 records were uncovered." *See Exhibit A, p. 3.*

21. On or around April 5, 2019, Arif Panju, on behalf of IJ, appealed the Councilmembers' denial of IJ's Open Records Request (the "Appeal") to the Kentucky Attorney General. *See Appeal to Attorney General, attached as Exhibit E.*

22. Under KRS 61.880(5), the Kentucky Attorney General has the statutory authority to issue legally binding decisions in disputes under the open records and open meetings laws.

23. On May 9, 2019, in response to the Appeal, the Kentucky Attorney General issued its Open Records Decision, 19-ORD-084 (the "AG Decision"). *See Exhibit A.*

24. The AG Decision provided that the Councilmembers improperly denied part two of IJ's Open Records Request and "did violate the Act by denying a request for all communications including certain terms within a specific date range that gave a sufficiently

precise description and did not pose an unreasonable burden on councilmembers under KRS 61.872(6).” *See* Exhibit A, pg. 1.<sup>1</sup>

25. On May 16, 2019, IJ provided each Councilmember a copy of the AG Decision and requested compliance with the IJ Open Records Request pursuant to the AG Decision. *See* Letter Notifying Councilmembers of AG Decision, attached as **Exhibit F**. The Councilmembers each received a copy of the letter via UPS. *See* UPS Receipt Confirmation, attached as **Exhibit G**.

26. On May 19, 2019 Councilmember Mulvihill provided a response to the AG Decision stating he would comply with the Open Records Request in accordance with the AG Decision. *See* Mulvihill Response, **Exhibit H**. However, as of the date of this Complaint, not one document has been produced. *See* Affidavit of Arif Panju, attached hereto as **Exhibit I**.

27. Pursuant to KRS 61.880(5)(b), the Councilmembers had thirty (30) days from the May 9, 2019 AG Decision to appeal, the Councilmembers thus had until June 8, 2019, to file an appeal or respond to IJ’s Open Record Request.

28. The Councilmembers did not file an appeal to the AG Decision.

29. As of the date of this Complaint, the Councilmembers have willfully failed to respond or provide any documents responsive to IJ’s Open Record Request, despite previously admitting that over 8,300 responsive documents exist. *See* Exhibit I.

30. On information and belief, the Councilmembers are continuing to move forward with passing O-347-18 while refusing to provide any access to the documents that the Councilmembers have considered in passing such ordinance.

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<sup>1</sup> As put forth in the AG Decision, certain parts of the IJ Open Records Request was denied. Therefore, this Complaint only seeks to enforce part two of the IJ Open Records Request, that was improperly denied in accordance with the AG Decision.

**COUNT I – ENFORCEMENT OF OPEN RECORDS DECISION 19-ORD-084**

31. Plaintiff hereby incorporates by reference the paragraphs above.

32. The AG Decision required the Councilmembers to provide Plaintiff records reflecting communications between June 1, 2017 and November 1, 2018 containing any of the following words: (1) “food truck” (2) “food trucks”, (3) vendor, (4) vendors, (5) “vending”, (6) “restaurant”, or (7) “restaurants” (collectively, the “Responsive Documents”). See Exhibit A, pp 1-2.

33. The Councilmembers failed to timely appeal the AG Decision and thus should have produced all Responsive Documents by June 8, 2019.

34. AG Decision 19-ORD-084 has the force and effect of law and is enforceable by this Court.

35. Pursuant to KRS 61.882(1), this Court has jurisdiction to enforce the Open Records Act, including the AG’s Decision, against the Councilmembers by injunction or other appropriate order compelling the Councilmembers to provide the Responsive Documents.

36. The Plaintiff’s rights are being violated by the Councilmembers’ failure to provide access to the requested public records, and Plaintiff is currently suffering and will continue to suffer, immediate and irreparable injury, loss or damage if the requested relief is not granted.

37. Kentucky law provides that violations under the Open Records Act should “take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.” KRS 61.882(4).

**COUNT II – STATUTORY DAMAGES**

38. Plaintiff hereby incorporates by reference the paragraphs above.

39. The Councilmembers have admitted that they have in their possession approximately 8,300 documents responsive to IJ's Open Records Request. *See* Exhibit A. However, the Councilmembers have failed to produce even one document in response to IJ's Open Record Request and the AG Decision. *See* Exhibit I.

40. Plaintiff has been unlawfully denied access to public records.

41. Despite notice of 19-ORD-084 and continued demands that the Councilmembers produce the documents they are required to under the law, the Councilmembers have continued to willfully disregard the AG Decision by withholding public records. *See* Exhibit F and G.

42. Plaintiff has had to expend resources, including the cost of filing this Complaint, in order to enforce the Open Records Act and AG Decision.

43. Pursuant to KRS 61.882(5), the Councilmembers are liable, jointly and severally, for statutory damages and reasonable costs and attorney fees incurred.

WHEREFORE, Plaintiff prays that the Court enter an Order:

1. An expedited hearing on this matter at the earliest practicable date;
2. A declaration that the Councilmembers willfully withheld records in violation of KRS 61.870 through 61.884.
3. Declaring that the Councilmembers must immediately produce the documents requested in the IJ Open Records Request in compliance with the AG Decision;
4. Awarding statutory fees and attorney fees;
5. All other relief the Court finds appropriate.



Respectfully submitted,

/s/ April A. Wimberg

April A. Wimberg (KBA #95741)

Brent Baughman (KBA # 83469)

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INSTITUTE FOR JUSTICE*

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Presiding Judge: HON. BARRY WILLETT (630175)

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**EXHIBIT LIST**

EXHIBIT A	Kentucky Attorney General's Open Records Decision, 19-ORD-084, issued on May 9, 2019
EXHIBIT B	Louisville Metro Consent Decree
EXHIBIT C	Letter Notifying Ordinance May Violate Consent Decree
EXHIBIT D	IJ Open Records Request
EXHIBIT E	Appeal to Attorney General
EXHIBIT F	Letter Notifying Councilmembers of AG Decision
EXHIBIT G	UPS Receipt Confirmation
EXHIBIT H	Mulvihill Response
EXHIBIT I	Affidavit of Arif Panju

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# EXHIBIT A

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Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000001 of 000008



COMMONWEALTH OF KENTUCKY  
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19-ORD-084

May 9, 2019

In re: Arif Panju/Louisville Metro Councilmembers Barbara Sexton-Smith, Pat Mulvihill, Scott Reed, and Brandon Coan

*Summary:* Louisville Metro Councilmembers did not violate the Open Records Act where requests for all records mentioning or relating to a certain subject, or “all documents and communications” with an entity without date restriction, did not comply with KRS 61.872(3)(b), which requires a request for copies by mail to describe the records with more precision; but Councilmembers did violate the Act by denying a request for all communications including certain terms within a specific date range that gave a sufficiently precise description and did not pose an unreasonable burden on councilmembers under KRS 61.872(6).

*Open Records Decision*

The question presented in this appeal is whether Louisville Metro Councilmembers Barbara Sexton-Smith, Pat Mulvihill, Scott Reed, and Brandon Coan (collectively, the “Councilmembers”)<sup>1</sup> violated the Open Records Act in the disposition of Arif Panju’s November 1, 2018, requests for copies of certain records broadly relating to proposed ordinance O-347-18, which concerns the regulation of “itinerant vendors, peddlers, and solicitors.” For the reasons that follow, we find that the majority of items in Mr. Panju’s requests failed to

<sup>1</sup> An individual member of a municipal council, as a “local government officer,” is a “public agency” under KRS 61.870(1)(a) for purposes of the Open Records Act. 03-ORD-196; 15-ORD-201.

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describe the records with the precision required by KRS 61.872(3), but as to the remaining item, the Councilmembers violated the Act by denying the request.

In his requests to the four Councilmembers, which were identical in their substantive content, Mr. Panju requested five items. The exact descriptions of the items requested are crucial to the determination of this appeal:

1. Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18.
2. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
3. Copies of all documents concerning (or referencing) the Louisville Downtown Partnership containing any of [those terms].
4. Copies of all documents and communications to or from the Louisville Downtown Partnership (including to or from any of its representatives or employees) containing any of [those terms].
5. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/or installed by Louisville Metro in 2017.

The record does not reflect the date or dates when the Councilmembers received the requests.

The Louisville Metro Council's open records coordinator issued an initial joint response dated November 7, 2018, which for some reason was postmarked November 12, 2018. On appeal, the Councilmembers have no explanation for why the postmark shows that date, but believe it was timely dispatched according to the usual procedure. Since the record on appeal is unclear, we can only conclude that if the initial response was not dispatched within three business days from receipt of the requests, it was untimely under KRS 61.880(1).

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In the initial joint response, the open records coordinator asserted that a search was "in progress, but [had] not yet returned results on the specified search terms," although "with the broad terminology it [was] expected to yield sizable hits." Therefore, the coordinator invoked KRS 61.872(5) and stated that additional time was necessary due to the need for the individual Councilmembers to conduct searches and to review the records "for exemptions and/or redactions in order to protect against invasions of personal privacy." She further stated that records would be available on December 7, 2018.

KRS 61.872(5) allows a public agency additional time to produce records that are "in active use, in storage or not otherwise available" if "a detailed explanation of the cause is given for further delay" and the agency provides a date certain when records will be available. We have held that "broadly worded requests" encompassing potentially vast amounts of records may warrant "reasonable delays in records production." 12-ORD-097. Due to the breadth of Mr. Panju's requests, we do not find the 30-day time frame inherently unreasonable in this case.

On December 7, 2018, Metro Council Clerk H. Stephen Ott denied Mr. Panju's requests in their entirety, on grounds that "it is an improperly framed open records request and because compliance would create an unreasonable burden on the agency." He argued that the requests did not reasonably identify the records and were "more properly characterized as a request for research to be performed." (Internal quotation marks omitted.) Mr. Ott further stated, "upon coordinating an electronic search utilizing the search terms you provided, approximately 8,300 records were uncovered. Producing these records would require an extraordinary amount of time as each record would be reviewed for, at least, attorney-client privileged information and personal information exempt pursuant to KRS 61.878(1)(a)." Mr. Panju initiated an appeal dated April 5, 2019, which this office received on April 11, 2019.

With regard to requests to receive copies of public records by mail, KRS 61.872(3)(b) provides, in pertinent part:

The 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 precisely*

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*describes the public records* which are readily available within the public agency.

(Emphasis added.) "A description is sufficiently precise for purposes of records access by mail if it describes the records in definite, specific, and unequivocal terms." 98-ORD-17 (internal quotation marks omitted).

We have often held that "blanket requests for information on a particular subject need not be honored." OAG 90-83. (See also 95-ORD-108 and opinions cited therein.) Thus, we found that a request to the City of Louisville for "all items pertaining to UPS and the airport expansion" was properly denied for lack of specificity. OAG 91-58 (emphasis omitted). Similarly, a request for "[a]ll memoranda, correspondence and/or documentation of whatever kind and nature regarding [a certain employee] not included in her personnel file" was insufficiently specific. OAG 90-83.<sup>2</sup>

This standard of precise description for records by mail is generally not met by what has been described as the "open-ended any-and-all-records-that-relate type of request." 08-ORD-058. Such a request runs the risk of being "so nonspecific as to preclude the custodian from determining what, if any, existing records it might encompass." 96-ORD-101. Furthermore, as the agency pointed out in its response, "a request for any and all records which contain a name, a term, or a phrase is not a properly framed open records request, and ... generally need not be honored. Such a request places an unreasonable burden on the agency to produce often incalculable numbers of widely dispersed and ill-defined public records." 99-ORD-14.

In 00-ORD-79, we found that a request for copies of "[a]ny and all records related to the granting of easements by the City of Indian Hills to its property owners for the purpose of connecting to any MSD sewer line ... from January 1, 1990 to January 1, 1999" was properly denied for lack of a precise description. We stated as follows:

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<sup>2</sup> To whatever extent our prior decisions may have applied a "reasonable particularity" standard to requests for on-site inspection of records, they have been implicitly overruled by *Com. v. Chestnut*, 250 S.W.3d 655 (Ky. 2008). Our analysis here is concerned with requests for copies by mail under KRS 61.872(3)(b).

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Mr. Mabry provided information that the number of properties that received easements was small and limited the timeframe of his records request. However, he did not identify the records that he wanted copied in definite, specific, and unequivocal terms. Unless he can describe the records he seeks with precision, the City is not obligated to search through its records for "any and all" records that may relate to his request.

00-ORD-79.

Here, item 1 of the request is clearly a blanket request for all records relating to or mentioning a subject, and thus resembles the request we found inadequate in 00-ORD-79. Similarly, item 3, for "all documents concerning (or referencing)" a subject, is insufficiently precise, despite specifying search terms to be used within those documents. Item 4, for "*all documents and communications to or from*" an entity (emphasis added), with no date range, likewise fails to describe the records with precision, notwithstanding the addition of search terms. Item 5, for "[a]ll documents and communications concerning or referencing" a subject, is also a blanket request, and is as imprecise as item 1. Therefore, as to items 1, 3, 4, and 5 of the requests, we find no violation of the Open Records Act.

Item 2, however, describes "communications" to or from the Councilmembers or their staff, within a specific time frame of 17 months, containing certain search terms. We find this a sufficiently precise description of the records under KRS 61.872(3)(b). On appeal, the Councilmembers do not claim that they cannot identify what records are encompassed by item 2; they merely argue that the responsive records "could include communications irrelevant to the real matter Mr. Panju is investigating - the proposed ordinance." It is irrelevant to our analysis under KRS 61.872(3)(b) whether the responsive documents might give the requester more than what the public agency believes he is really interested in. The only question is whether the request "precisely describes" an identifiable group of records. Under that standard, item 2 is a proper request.



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This leaves only the Councilmembers' argument that fulfilling the request would impose an unreasonable burden. In pertinent part, KRS 61.872(6) provides:

If the application places an unreasonable burden in producing public records[,] the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

In extreme cases, we have occasionally found that a public agency met this burden of clear and convincing evidence in a case of exceptionally large volumes of records requiring statutorily mandated redactions. *See, e.g.,* 14-ORD-109 (request included at least 6,200 e-mails which must be redacted for information protected by FERPA); 11-ORD-173 (at least 8,500 e-mails must be redacted under FERPA); 17-ORD-104 (225 million records must be redacted under FERPA); *but see* 14-ORD-153 (clear and convincing standard was not met where school district did not provide minimum number of e-mails that required FERPA redaction).

In this case, the Councilmembers have provided an estimated number of 8,300 records, but this represented an aggregate of all documents found electronically using Mr. Panju's search terms, for *all* items of the request, not a figure for those records specifically responsive to item 2. Furthermore, this appeal is distinguishable from those involving mandatory redactions under FERPA, as the Councilmembers have cited only speculative privacy concerns and potential issues of attorney-client privilege. Nor have the Councilmembers provided any estimate of the staff time that would be required to review the responsive records for these discretionary redactions. *Cf.* 17-ORD-104 n.4 (university estimated that review of 225 million items, even at one second per item, "would take over 29 years of staff time"). Given the limited information offered by the Councilmembers, we cannot conclude that they have met their burden of clear and convincing evidence to establish that compliance with item 2 would impose an unreasonable burden. Therefore, we conclude that the Councilmembers violated the Open Records Act by denying item 2 of Mr. Panju's requests.

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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. 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.

Andy Beshear  
Attorney General



James M. Herrick  
Assistant Attorney General

#167

Distribution:

Mr. Arif Panju  
Ms. Lisa Franklin Gray  
Annale R. Taylor, Esq.

# EXHIBIT B

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000019 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000001 of 000007

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

TROY KING and ROBERT MARTIN,

*Plaintiffs,*

v.

LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT,

*Defendant.*

Civil Action No. 3:17-CV-390-DJH-CHL

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**CONSENT DECREE**

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This Consent Decree is made and agreed upon by and between Troy King and Robert Martin (“Plaintiffs”) and the Louisville/Jefferson County Metro Government (“Louisville Metro”). Plaintiffs and Louisville Metro shall jointly be referred to as the “Parties.”

**RECITALS**

**WHEREAS**, on June 28, 2017, Plaintiffs filed suit against Louisville Metro in the case captioned *King, et al. v. Louisville/Jefferson County Metro Government*, in the United States District Court for the Western District of Kentucky, Louisville Division, under docket number 3:17-CV-390 (“Litigation”). The Litigation raised claims that Louisville/Jefferson County Metro Government Code of Ordinances (“LMCO”) § 115.369(E) violates Plaintiffs’ rights under the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the United States Constitution. The allegations in Plaintiffs’ Complaint, which was served on Louisville Metro on June 29, 2017, are incorporated herein by reference. In the Litigation, Plaintiffs sought a declaratory judgment that LMCO § 115.369(E), facially and as

applied to Plaintiffs, violates the Fourteenth Amendment; Plaintiffs also sought a permanent injunction, attorneys' fees, costs, and nominal damages in the amount of \$1 to each Plaintiff for the alleged violations of their constitutional rights;

**WHEREAS**, Louisville Metro filed and served its Answer to Plaintiffs' Complaint on August 3, 2017, disputing Plaintiffs' claims, said responses of which are incorporated herein by reference;

**WHEREAS**, in order to resolve their differences, the Parties have agreed that it is reasonable and necessary to enter into this Consent Decree.

**NOW, THEREFORE, IT IS HEREBY ORDERED PURSUANT TO AGREEMENT OF THE PARTIES AS FOLLOWS:**

1. It is stipulated and agreed that an actual case and controversy exists sufficient to enter the instant Consent Decree.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983.
3. Venue lies in this Court pursuant to 28 U.S.C. § 1391.
4. The Parties recognize, and, by entering this Consent Decree, this Court finds that this Consent Decree has been negotiated by the Parties in good faith and that it is fair, reasonable, adequate, and in the public interest.
5. It is stipulated and agreed that Plaintiffs' food truck businesses, and all other food trucks that operate on public and private property, are considered "mobile food unit vendors" under the Louisville/Jefferson County Metro Government Code of Ordinances, *see* LMCO § 115.350(G), and that they do not fall within the scope of any other category of

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Consent Decree

- regulated vendors (including but not limited to the categories of “itinerant vendor,” “mobile vendor,” “peddler,” and/or “stationary vendor”).
6. It is stipulated and agreed that, until LMCO § 115.369(E) is repealed, Louisville Metro, its employees, agents, representatives, and successors, will not enforce LMCO § 115.369(E).
  7. It is stipulated and agreed that Louisville Metro, its employees, agents, representatives, and successors hereby agree that they will not now or hereafter enforce any of its ordinances, administrative rules, or policies in a manner that is inconsistent with this Consent Decree, or that treats mobile food unit vendors differently than other commercial vehicles permitted or otherwise allowed in Louisville Metro’s rights of way. These entities will not enforce any ordinances, administrative rules, or policies in a manner that prohibits mobile food unit vendors from conducting vending operations solely because they are within a certain distance of another commercial food establishment, including but not limited to restaurants, cafés, or other eating establishments. Louisville Metro’s rights to govern its restaurants, roads and rights of way to protect public safety, convenience, or health remains unaffected by this Consent Decree.
  8. Louisville Metro, its employees, agents, representatives, and successors hereby agree to not promulgate or enforce any regulation, rule, ordinance, or policy that prohibits mobile food unit vendors from conducting vending operations solely because they are within a certain distance of another commercial food establishment, including but not limited to restaurants, cafés, or other eating establishments.
  9. For a period of time of five years following the entry of this Consent Decree, prior to promulgating an administrative rule, or voting on any amendment to LMCO Chapter

*King et al. v. Louisville/Jefferson County Metro Government*  
Consent Decree

- 115.369 or other ordinance addressing vending operations conducted by mobile food unit vendors, Louisville Metro will provide Plaintiffs' counsel with 30-day notice of such rules, proposed amendments, or ordinances. Plaintiffs may then take appropriate steps pursuant to paragraph 15 of this Consent Decree to voice their concerns.
10. Louisville Metro agrees to remove all street signage containing the words "No Food Trucks" (or variations of the same message) immediately upon entry of this Consent Decree, and to cease installing any new street signage containing the words "No Food Trucks" (or variations of the same message).
  11. Louisville Metro agrees to dismiss any pending tickets issued to mobile food unit vendors for alleged violations based solely on LMCO § 115.369(E).
  12. Louisville Metro agrees to not consider past violations of LMCO § 115.369(E) when issuing or renewing mobile food unit vending licenses.
  13. Louisville Metro understands, once entered, this Consent Decree will become a public record, and Louisville Metro will post this Consent Decree and the ordinance repealing LMCO § 115.369(E) on its website.

#### **EFFECTIVE DATE**

14. This Consent Decree shall be effective the date this Court enters it as recorded on this Court's docket.

#### **ENFORCEMENT**

15. If Plaintiffs reasonably believe that Louisville Metro is not in substantial compliance with the terms of this Consent Decree, Plaintiffs' counsel shall, by written notice, call a meeting with counsel for Louisville Metro to be held at a mutually agreeable time and

place within thirty (30) days of the request to discuss and attempt to resolve the dispute.

Counsel for Louisville Metro shall attend such a meeting.

16. In the event that counsel for Louisville Metro and counsel for Plaintiffs cannot come to an agreement that resolves the claimed violations, Plaintiffs may move this Court, pursuant to Rule 70 of the Federal Rules of Civil Procedure or any other applicable rule or procedure, for an order enforcing the provisions of this Consent Decree and any other enforcement and implementation mechanisms as may be necessary or appropriate. If this Court issues such an order, this Court may, in its discretion, award Plaintiffs' counsel their reasonable attorneys' fees and costs associated with obtaining such an order.
17. This Consent Decree constitutes final relief entered by this Court and is enforceable through this Court's contempt powers. This Court shall retain jurisdiction over this matter for all purposes and may issue such orders as may be necessary or appropriate to enforce this Consent Decree.
18. The Parties may jointly agree to make changes, modifications, and amendments to this Consent Decree, which shall be effective if approved by this Court.
19. The Parties agree to defend the provisions of this Consent Decree. Each party shall notify the other of any legal challenge to this Consent Decree, whether such challenge arises in a court, an administrative proceeding, or otherwise. If any provision of this Consent Decree is challenged in any state or municipal court, the Parties shall agree to consent to removal to Federal Court.
20. Louisville Metro shall require compliance with this Consent Decree by its respective officers, employees, agents, agencies, representatives, assigns, or successors.

*King et al. v. Louisville/Jefferson County Metro Government*  
Consent Decree



June 15, 2018



David J. Hale, Judge  
United States District Court

Stipulated and Agreed to:

/s/ Arif Panju

Arif Panju\* (TX Bar No. 24070380)  
INSTITUTE FOR JUSTICE  
816 Congress Ave., Suite 960  
Austin, TX 78701  
(512) 480-5936  
(512) 480-5937 (fax)  
apanju@ij.org

*Counsel for Plaintiffs*

*\*Admitted Pro Hac Vice*

/s/ Matthew J. Golden

Matthew J. Golden  
Assistant County Attorney  
Fiscal Court Building  
531 Court Place, Suite 900  
Louisville, KY 40202  
(502) 574-4048  
matt.golden@louisvilleky.gov

*Counsel for Louisville/Jefferson County  
Metro Government*

*King et al. v. Louisville/Jefferson County Metro Government*  
Consent Decree

# EXHIBIT C

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000026 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000001 of 000004



## INSTITUTE FOR JUSTICE

October 11, 2018

Mayor Greg Fischer  
527 W. Jefferson Street, 4th Floor  
Louisville, KY 40202

Re: Ordinance O-374-18

Dear Mayor Fischer,

I write today concerning a proposed ordinance that would greatly restrict vending opportunities in Louisville, Kentucky, and that violates a federal consent decree Louisville Metro entered into in June. As you may be aware, the Institute for Justice ("IJ") is a public interest, civil liberties law firm that works to vindicate economic liberty—the right to earn an honest living. IJ's National Street Vending Initiative works with city officials to reform local laws and has also sued municipalities to challenge laws that unconstitutionally restrict vendors' rights.

As part of that effort, in June 2017, IJ sued Louisville Metro in federal court concerning its requirement, contained in LMCO § 115.369(E), that food trucks not operate within 150 feet of a restaurant without permission. In response, Louisville repealed LMCO § 115.369(E) and entered into a consent decree (attached to this correspondence) requiring, among other things, that Louisville not disadvantage mobile vendors by treating them differently than other commercial vehicles, which are permitted to park at public parking spaces as part of conducting their trade. *See* Consent Decree ¶ 7, *King v. Louisville/Jefferson Cty. Metro Gov't*, Civ. A. No. 3:17-cv-00390-DJH-CHL (June 18, 2018) (ECF No. 25) (requiring Louisville not to "treat[] mobile food unit vendors differently than other commercial vehicles permitted or otherwise allowed in Louisville Metro's rights of way"). This consent decree is legally binding, and violations of it can be enforced through the federal district court's contempt power.

The proposed ordinance that is scheduled to be introduced today would violate that consent decree by greatly restricting vending operations and treating mobile vendors differently from other commercial vehicles. It does so in three distinct ways.

First, the proposed ordinance would prohibit mobile vendors from parking in a metered parking space in order to vend. Ordinance O-374-18, § I (amending LMCO § 72.803). It therefore treats vendors differently than other commercial vehicles, which can park in a space as part of their commercial enterprise. For instance, a UPS truck can park in a metered parking space so that its driver can pick up or deliver packages, just as a repair truck can park in a metered parking space so that the repairperson has a base of operations during his or her repair job.

ARLINGTON AUSTIN BELLEVUE CHICAGO MIAMI MINNEAPOLIS TEMPE

816 Congress Avenue, Suite 960 Austin, TX 78701 (512) 480-5936 (512) 480-5937 Fax

19-CI-004289

07/16/2019

general@ij.org

www.ij.org/texas

David L. Nicholson, Jefferson Circuit Clerk

Mayor Greg Fischer  
October 11, 2018  
Page 2

Second, the proposed ordinance would eliminate the authority of the Assistant Director of PARC from issuing “meter bags,” permits that authorize the holder to cover a parking meter temporarily for various purposes, including “construction or maintenance work.” Again, this elimination treats mobile vendors differently than other commercial vehicles, such as the repair trucks discussed above, and deprives vendors of a valuable parking option that is available for numerous other commercial vehicles.

Third, the proposed ordinance rewrites Louisville Metro’s municipal code concerning vendors. It eliminates a previous legal classification, used in the consent decree, of “mobile food unit vendor,” instead combining all mobile vendors under one label in violation of the consent decree. *See* Consent Decree ¶ 5 (stipulating that food trucks are “mobile food unit vendors” under the LMCO and “do not fall within the scope of any other category of regulated vendors” including “itinerant vendor” and “mobile vendor,” among others). The proposed ordinance then severely restricts the operations of “mobile vendors” by imposing requirements not shared by other commercial vehicles, also in violation of the consent decree. The proposed ordinance, for instance, would force food trucks to move at least 250 feet every ten minutes. It tells food trucks that they can only operate during daylight hours, as opposed to other commercial vehicles which can park and operate whenever they see fit. And it would ban mobile vendors, but not other commercial vehicles, from operating within 1,000 feet of any hospital and/or public or private school.

These amendments further no health-or-safety rationale: For instance, the ordinance would force a gourmet food truck, with hot fryers and grills, to move every ten minutes. Far from making Louisville residents safer, this misguided action would endanger food truck operators. Furthermore, by forcing mobile vehicles to start up and move every ten minutes, Louisville would be creating a situation that worsens, rather than ameliorates, traffic safety. Nor does requiring a mobile vendor to secure the permission of any and all persons within twenty feet of a proposed private-property location further any interest, given that current law already requires the vendor to secure the signed and notarized permission of the property owner.

Instead, these legislative changes, just like the unconstitutional 150-Foot Rule II brought suit about in 2017, exist for only one purpose: To destroy the viability of mobile vending in Louisville in order to serve the private, financial interests of politically-connected restaurateurs. But such actions violate the United States Constitution, which both the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit have held does not countenance blatantly protectionist laws like the one under consideration. *See, e.g., City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978) (“[W]here simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected.”); *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) (“Courts have repeatedly recognized that protecting a discrete interest group from economic competition is not a legitimate governmental purpose.”).

Mayor Greg Fischer  
October 11, 2018  
Page 3

These proposed legislative amendments are not just unconstitutional. They also violate, both in substance and procedure, the terms of the June 2018 Consent Decree entered into by Plaintiffs and Louisville Metro. Plaintiffs reasonably believe that, in introducing proposed amendments without first giving Plaintiffs' counsel 30 days of notice, as required by Section 9 of the Decree, and by failing to post the consent decree to its website, as required by Section 13, Louisville Metro has failed to maintain substantial compliance with its legal obligations. Plaintiffs therefore request, pursuant to Section 15 of that Decree, that the parties meet within thirty (30) days to attempt to resolve this ongoing dispute. They furthermore urge Louisville Metro to withdraw the proposed ordinance so that Metro residents can continue to decide for themselves whom to patronize for lunch.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif Panju', with a large, stylized flourish extending from the end of the signature.

Arif Panju  
Attorney

# EXHIBIT D

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000030 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000001 of 000009



## INSTITUTE FOR JUSTICE

November 1, 2018

**Via First-Class Mail**

Council Member Barbara Sexton Smith  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Open Records Request**

Ms. Sexton Smith:

I request the following information from you pursuant to Kentucky Open Records Act, § 61.872, et seq., which guarantees public access to information in the custody of governmental bodies. As you know, the Act requires a response within three (3) business days.

When invoicing me for the following requested information, please address each numbered request discretely, as though each numbered request were an individual open records request.

**Requested Information:**

1. Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18.
2. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
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4. Copies of all documents and communications to or from the Louisville Downtown Partnership (including to or from any of its representatives or employees) containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."

Open Records Request  
Page 1 of 2

5. All documents and communications concerning or referencing the “No Food Trucks” signs authorized and/or installed by Louisville Metro in 2017.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif Panju', written over a horizontal line.

Arif Panju  
Institute for Justice





## INSTITUTE FOR JUSTICE

November 1, 2018

**Via First-Class Mail**

Council Member Scott Reed  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Open Records Request**

Mr. Reed:

I request the following information from you pursuant to Kentucky Open Records Act, § 61.872, et seq., which guarantees public access to information in the custody of governmental bodies. As you know, the Act requires a response within three (3) business days.

When invoicing me for the following requested information, please address each numbered request discretely, as though each numbered request were an individual open records request.

**Requested Information:**

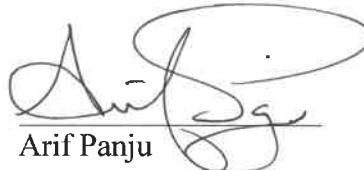
1. Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18.
2. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
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4. Copies of all documents and communications to or from the Louisville Downtown Partnership (including to or from any of its representatives or employees) containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."

Open Records Request  
Page 1 of 2

5. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/or installed by Louisville Metro in 2017.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Sincerely,



Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

November 1, 2018

**Via First-Class Mail**

Council Member Brandon Coan  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Open Records Request**

Mr. Coan:

I request the following information from you pursuant to Kentucky Open Records Act, § 61.872, et seq., which guarantees public access to information in the custody of governmental bodies. As you know, the Act requires a response within three (3) business days.

When invoicing me for the following requested information, please address each numbered request discretely, as though each numbered request were an individual open records request.

**Requested Information:**

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Open Records Request  
Page 1 of 2

5. All documents and communications concerning or referencing the “No Food Trucks” signs authorized and/or installed by Louisville Metro in 2017.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif Panju', written over a horizontal line.

Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

November 1, 2018

**Via First-Class Mail**

Council Member Pat Mulvihill  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Open Records Request**

Mr. Mulvihill:

I request the following information from you pursuant to Kentucky Open Records Act, § 61.872, et seq., which guarantees public access to information in the custody of governmental bodies. As you know, the Act requires a response within three (3) business days.

When invoicing me for the following requested information, please address each numbered request discretely, as though each numbered request were an individual open records request.

**Requested Information:**

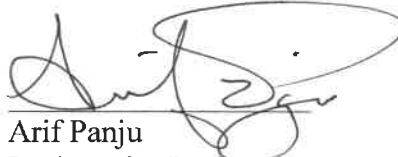
1. Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18.
2. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
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Open Records Request  
Page 1 of 2

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Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif Panju', written over a horizontal line.

Arif Panju  
Institute for Justice

# EXHIBIT E

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000039 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000001 of 000093



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Barbara Sexton-Smith in her official capacity as a councilmember on the Louisville Metro Council.

Councilmember Sexton-Smith co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Ms. Sexton-Smith seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Ms. Sexton-Smith and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Ms. Sexton-Smith, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Ms. Sexton-Smith (via her records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Ms. Sexton-Smith (via her records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Ms. Sexton-Smith violated the 3-day response deadline.



("KORA"), the denial letter states that the search terms contained in my open records request to Ms. Sexton-Smith yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Ms. Sexton-Smith's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Ms. Sexton-Smith (through her open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Ms. Sexton-Smith to produce the requested records.

Ms. Sexton-Smith's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Ms. Sexton-Smith relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Ms. Sexton-Smith's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Ms. Sexton-Smith does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Ms. Sexton-Smith's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact

<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Ms. Sexton-Smith presented no evidence that the request she received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in her initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Ms. Sexton-Smith along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Ms. Sexton-Smith’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Ms. Sexton-Smith’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Ms. Sexton-Smith identified as responsive in order to redact personal information—indeed, review of Ms. Sexton-Smith’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Ms. Sexton-Smith’s bare assertions of speculative privacy concerns.

Councilmember Sexton-Smith is in violation of Kentucky’s Open Records Act. She has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Ms. Sexton-Smith’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice

# Exhibit A



## INSTITUTE FOR JUSTICE

November 1, 2018

**Via First-Class Mail**

Council Member Barbara Sexton Smith  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Open Records Request**

Ms. Sexton Smith:

I request the following information from you pursuant to Kentucky Open Records Act, § 61.872, et seq., which guarantees public access to information in the custody of governmental bodies. As you know, the Act requires a response within three (3) business days.

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2. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
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4. Copies of all documents and communications to or from the Louisville Downtown Partnership (including to or from any of its representatives or employees) containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."

Open Records Request  
Page 1 of 2

ARLINGTON AUSTIN BELLEVUE CHICAGO MIAMI MINNEAPOLIS TEMPE

5. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/or installed by Louisville Metro in 2017.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif Panju', written over a horizontal line.

Arif Panju  
Institute for Justice

# Exhibit B

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000046 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000008 of 000093



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
 Andy Beshear, Attorney General  
 Open Records - Appeals  
 700 Capitol Avenue, Suite 118  
 Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Brandon Coan in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Coan co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Coan seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Coan and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Coan, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Coan (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Coan (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Coan violated the 3-day response deadline.

letter states that the search terms contained in my open records request to Mr. Coan yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Coan's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Coan (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Coan to produce the requested records.

Mr. Coan's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Coan relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Coan's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Coan does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Coan's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact

<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.




that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Coan presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Coan along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Coan’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Coan’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Coan identified as responsive in order to redact personal information—indeed, review of Mr. Coan’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Coan’s bare assertions of speculative privacy concerns.

Councilmember Coan is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Coan’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Scott Reed in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Reed co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Reed seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Reed and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Reed, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Reed (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Reed (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial

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letter states that the search terms contained in my open records request to Mr. Reed yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Reed's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Reed (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Reed to produce the requested records.

Mr. Reed's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Reed relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Reed's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Reed does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Reed's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

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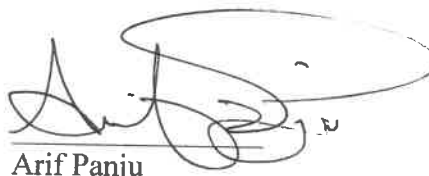
<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Reed presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Reed along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Reed’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Reed’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Reed identified as responsive in order to redact personal information—indeed, review of Mr. Reed’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.*, 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Reed’s bare assertions of speculative privacy concerns.

Councilmember Reed is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Reed’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Pat Mulvihill in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Mulvihill co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Mulvihill seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Mulvihill and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Mulvihill, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Mulvihill (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Mulvihill (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research."

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Mulvihill violated the 3-day response deadline.

Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial letter states that the search terms contained in my open records request to Mr. Mulvihill yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Mulvihill's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Mulvihill (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Mulvihill to produce the requested records.

Mr. Mulvihill's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Mulvihill relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Mulvihill's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Mulvihill does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Mulvihill's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

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Similarly, Mr. Mulvihill presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Mulvihill along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Mulvihill’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Mulvihill’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Mulvihill identified as responsive in order to redact personal information—indeed, review of Mr. Mulvihill’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Mulvihill’s bare assertions of speculative privacy concerns.

Councilmember Mulvihill is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Mulvihill’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice

# Exhibit C

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000056 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000018 of 000093





## LOUISVILLE METRO COUNCIL

November 7, 2018

Arif Panju  
Institute for Justice  
816 Congress Avenue, Ste. 960  
Austin, TX 78701

Dear Mr./Ms. Panju:

We are in receipt of your request for records to the Metro Council Clerk and the Districts 4, 8, 10, and 16 Metro Council Offices received November 2, 2018. I have been requested as Open Records Coordinator by Council Members Welch and Fowler to respond to your request.

Your request states the following:

- a. "Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18"
- b. "Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) 'food truck'; (2) 'food trucks'; (3) 'vendor'; (4) 'vendors'; (5) 'vending'; (6) 'restaurant'; or (7) 'restaurants'"
- c. "Copies of all documents concerning (or referencing) the Louisville Downtown Partnership containing any of the following words: (1) 'food truck'; (2) 'food trucks'; (3) 'vendor'; (4) 'vendors'; (5) 'vending'; (6) 'restaurant'; or (7) 'restaurants'"
- d. "Copies of all documents and communications to and from the Louisville Downtown Partnership (including to or from any of the following words: (1) 'food truck'; (2) 'food trucks'; (3) 'vendor'; (4) 'vendors'; (5) 'vending'; (6) 'restaurant'; or (7) 'restaurants'"
- e. "All documents and communications concerning or referencing the 'No Food Trucks' signs authorized and/or installed by Louisville Metro in 2017."

Additionally, you have requested;

- f. "Copies of all 'research' referred to in O-347-18. See, e.g., <https://louisville.legistar.com/View.ashx?M=F&ID=6675148&GUID=C6747763-4C6F-4DB8-BE8E-5C8AED1819D5> (WHEREAS, research that cities have, at best, made incremental strides in regulating the complexities



## LOUISVILLE METRO COUNCIL

*of the itinerant vendor industry, including issues such as parking, noise, traffic, safety, and waste disposal [.]”*

Upon receipt of your request, Metro Open Records Response team was contacted to conduct a search of all the aforementioned parties email accounts between June 1, 2017 and November 1, 2018. At this time, the search is in process, but has not yet returned results on the specified search terms, however, with the broad terminology it is expected to yield sizable hits.

Therefore, please be advised that, pursuant to KRS 61.872(5), additional time is necessary to respond to your request. Additionally, the council members and their staff must conduct a search of their documents and/or correspondence for any responsive records. Once the search is completed, responsive emails, letters and documents will need to be reviewed by the council member and staff for exemptions and/or redactions in order to protect against invasions of personal privacy. The earliest date upon which we expect to have the records available for your review is Friday, December 7. However, we will contact you in the event the records become available sooner.

Please let me know if you have questions; I am available during Metro business hours at (502) 574-3902 or [lisa.franklingray@louisvilleky.gov](mailto:lisa.franklingray@louisvilleky.gov) 601 W. Jefferson St., Louisville KY 40202.

Very truly yours,

*Lisa Franklin Gray*

Lisa Franklin Gray  
Open Records Coordinator  
Louisville Metro Council

Cc: Barbara Sexton Smith, District 4 Councilwoman  
Brandon Coan, District 8 Councilman  
Pat Mulvihill, District 10 Councilman  
Scott Reed, District 16 Councilman  
H. Stephen Ott, Council Clerk  
Tracy Gaines, Manager, Metro Council Business Office



LOUISVILLE METRO COUNCIL  
601 WEST JEFFERSON STREET  
LOUISVILLE, KENTUCKY 40202-2741

Arif Panju  
Institute for Justice  
816 Congress Avenue, Ste. 960  
Austin, TX 78701

7870132475 0007



# Exhibit D

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000060 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000022 of 000093



LOUISVILLE METRO COUNCIL  
CLERK'S OFFICE

H. STEPHEN OTT  
CLERK OF THE COUNCIL

December 7, 2018

Arif Panju  
816 Congress Avenue, Suite 960  
Austin, TX 78701  
(512) 480-5936

Dear Mr. Panju:

We are in receipt of your November 1 and 2, 2018 Open Records Requests. Pursuant to KRS 61.872(6), Louisville Metro Council Members Coan, Mulvihill, Reed, and Sexton Smith are denying your November 1 request as it is an improperly framed open records request and because compliance would create an unreasonable burden on the agency.

The Attorney General has held that as a precondition to inspection, "a requesting party must identify with 'reasonable particularity' those documents which he or she wishes to review." 05-ORD-014, p.3. Your request for all documents and communications referencing specific search terms is more properly characterized as "a request for research to be performed, rather than an inspection of reasonably described public records." *Id.* Public agencies are not required to carry out research in response to an Open Records Request. *Id.*

Further, upon coordinating an electronic search utilizing the search terms you provided, approximately 8,300 records were uncovered. Producing these records would require an extraordinary amount of time as each record would be reviewed for, at least, attorney-client privileged information and personal information exempt pursuant to KRS 61.878(1)(a).

In response to your November 2 request, the research referred to in O-347-18 has been provided to me. Standard copy fees are \$0.10 per page or if you prefer an electronic copy, the standard fee is \$2.00 per CD. The research makes up 286 number of pages. To mail the hard copies it will cost \$28.60 (plus shipping costs) or to mail the CD will cost a total of \$3.50 (this includes shipping costs). If you would like a copy of the research, please contact my office and provide exact payment via cash or check to the Louisville Metro Government. My contact information follows:

H. Stephen Ott, CKMC, Clerk  
Metro Council Clerk's Office  
601 W. Jefferson Street | Louisville, KY 40202  
P: (502) 574-3085 F: (502) 574-3363  
[Stephen.ott@louisvilleky.gov](mailto:Stephen.ott@louisvilleky.gov)

601 WEST JEFFERSON STREET, 1ST FLOOR LOUISVILLE, KENTUCKY 40202

502.574.3085 502.574.3363 FAX STEPHEN.OTT@LOUISVILLEKY.GOV

Sincerely,



H. Stephen Ott  
Clerk for the  
Louisville Metro Council

Cc: Lisa Franklin Gray, Metro Council Open Records Coordinator  
Council Member Brandon Coan  
Council Member Patrick Mulvihill  
Council Member Scott Reed  
Council Member Barbara Sexton Smith  
Sean Dennis, Jefferson County Attorney's Office  
Annale Renneker, Jefferson County Attorney's Office

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000062 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000024 of 000093



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Scott Reed in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Reed co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Reed seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Reed and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

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First, on November 7, 2018, Mr. Reed (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Reed (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Reed violated the 3-day response deadline.

letter states that the search terms contained in my open records request to Mr. Reed yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Reed's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Reed (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Reed to produce the requested records.

Mr. Reed's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Reed relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Reed's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Reed does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Reed's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact

<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

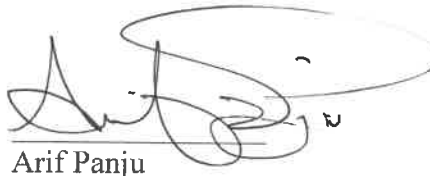


that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Reed presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Reed along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Reed’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Reed’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Reed identified as responsive in order to redact personal information—indeed, review of Mr. Reed’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Reed’s bare assertions of speculative privacy concerns.

Councilmember Reed is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Reed’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice

# Exhibit A

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000066 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000028 of 000093



## INSTITUTE FOR JUSTICE

November 1, 2018

**Via First-Class Mail**

Council Member Scott Reed  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Open Records Request**

Mr. Reed:

I request the following information from you pursuant to Kentucky Open Records Act, § 61.872, et seq., which guarantees public access to information in the custody of governmental bodies. As you know, the Act requires a response within three (3) business days.

When invoicing me for the following requested information, please address each numbered request discretely, as though each numbered request were an individual open records request.

**Requested Information:**

1. Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18.
2. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
3. Copies of all documents concerning (or referencing) the Louisville Downtown Partnership containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
4. Copies of all documents and communications to or from the Louisville Downtown Partnership (including to or from any of its representatives or employees) containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."

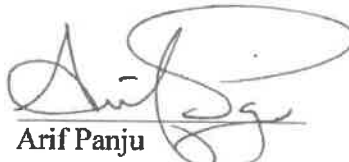
Open Records Request  
Page 1 of 2

ARLINGTON AUSTIN BELLEVUE CHICAGO MIAMI MINNEAPOLIS TEMPE

5. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/or installed by Louisville Metro in 2017.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Sincerely,



Arif Panju  
Institute for Justice

# Exhibit B

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000069 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000031 of 000093



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Brandon Coan in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Coan co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Coan seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Coan and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Coan, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Coan (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Coan (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Coan violated the 3-day response deadline.

letter states that the search terms contained in my open records request to Mr. Coan yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Coan's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Coan (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Coan to produce the requested records.

Mr. Coan's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Coan relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Coan's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Coan does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Coan's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact

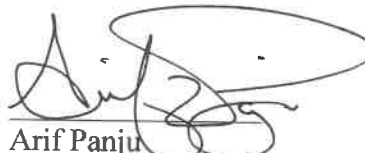
<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Coan presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[.]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Coan along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Coan’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Coan’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Coan identified as responsive in order to redact personal information—indeed, review of Mr. Coan’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Coan’s bare assertions of speculative privacy concerns.

Councilmember Coan is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Coan’s denial of my open records request and order that these public records be produced.

  
Arif Panju  
Institute for Justice





## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Pat Mulvihill in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Mulvihill co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Mulvihill seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Mulvihill and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Mulvihill, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Mulvihill (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Mulvihill (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research."

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Mulvihill violated the 3-day response deadline.

Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial letter states that the search terms contained in my open records request to Mr. Mulvihill yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Mulvihill's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Mulvihill (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Mulvihill to produce the requested records.

Mr. Mulvihill's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Mulvihill relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Mulvihill's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Mulvihill does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Mulvihill's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will


<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden.” *Id.* at 665. Moreover, the fact that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Mulvihill presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Mulvihill along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Mulvihill’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Mulvihill’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Mulvihill identified as responsive in order to redact personal information—indeed, review of Mr. Mulvihill’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Mulvihill’s bare assertions of speculative privacy concerns.

Councilmember Mulvihill is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Mulvihill’s denial of my open records request and order that these public records be produced.

  
Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Barbara Sexton-Smith in her official capacity as a councilmember on the Louisville Metro Council.

Councilmember Sexton-Smith co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Ms. Sexton-Smith seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Ms. Sexton-Smith and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Ms. Sexton-Smith, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Ms. Sexton-Smith (via her records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Ms. Sexton-Smith (via her records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Ms. Sexton-Smith violated the 3-day response deadline.

("KORA"), the denial letter states that the search terms contained in my open records request to Ms. Sexton-Smith yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Ms. Sexton-Smith's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Ms. Sexton-Smith (through her open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Ms. Sexton-Smith to produce the requested records.

Ms. Sexton-Smith's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Ms. Sexton-Smith relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Ms. Sexton-Smith's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Ms. Sexton-Smith does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Ms. Sexton-Smith's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

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<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Ms. Sexton-Smith presented no evidence that the request she received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in her initial response that the number of responsive records was “*expected to yield sizable hits[,]*” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Ms. Sexton-Smith along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Ms. Sexton-Smith’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Ms. Sexton-Smith’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Ms. Sexton-Smith identified as responsive in order to redact personal information—indeed, review of Ms. Sexton-Smith’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Ms. Sexton-Smith’s bare assertions of speculative privacy concerns.

Councilmember Sexton-Smith is in violation of Kentucky’s Open Records Act. She has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Ms. Sexton-Smith’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice

# Exhibit C

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000079 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000041 of 000093



## LOUISVILLE METRO COUNCIL

November 7, 2018

Arif Panju  
Institute for Justice  
816 Congress Avenue, Ste. 960  
Austin, TX 78701

Dear Mr./Ms. Panju:

We are in receipt of your request for records to the Metro Council Clerk and the Districts 4, 8, 10, and 16 Metro Council Offices received November 2, 2018. I have been requested as Open Records Coordinator by Council Members Welch and Fowler to respond to your request.

Your request states the following:

- a. "Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18"
- b. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants"
- c. Copies of all documents concerning (or referencing) the Louisville Downtown Partnership containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants"
- d. Copies of all documents and communications to and from the Louisville Downtown Partnership (including to or from any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants"
- e. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/or installed by Louisville Metro in 2017.

Additionally, you have requested;

- f. Copies of all "research" referred to in O-347-18. See, e.g., <https://louisville.legistar.com/View.ashx?M=F&ID=6675148&GUID=C6747763-4C6F-4DB8-BE8E-5C8AED1819D5> (WHEREAS, research that cities have, at best, made incremental strides in regulating the complexities





## LOUISVILLE METRO COUNCIL

**of the itinerant vendor industry, including issues such as parking, noise, traffic, safety, and waste disposal [.]”**

Upon receipt of your request, Metro Open Records Response team was contacted to conduct a search of all the aforementioned parties email accounts between June 1, 2017 and November 1, 2018. At this time, the search is in process, but has not yet returned results on the specified search terms, however, with the broad terminology it is expected to yield sizable hits.

Therefore, please be advised that, pursuant to KRS 61.872(5), additional time is necessary to respond to your request. Additionally, the council members and their staff must conduct a search of their documents and/or correspondence for any responsive records. Once the search is completed, responsive emails, letters and documents will need to be reviewed by the council member and staff for exemptions and/or redactions in order to protect against invasions of personal privacy. The earliest date upon which we expect to have the records available for your review is Friday, December 7. However, we will contact you in the event the records become available sooner.

Please let me know if you have questions; I am available during Metro business hours at (502) 574-3902 or [lisa.franklingray@louisvilleky.gov](mailto:lisa.franklingray@louisvilleky.gov) 601 W. Jefferson St., Louisville KY 40202.

Very truly yours,

*Lisa Franklin Gray*

Lisa Franklin Gray  
Open Records Coordinator  
Louisville Metro Council

Cc: Barbara Sexton Smith, District 4 Councilwoman  
Brandon Coan, District 8 Councilman  
Pat Mulvihill, District 10 Councilman  
Scott Reed, District 16 Councilman  
H. Stephen Ott, Council Clerk  
Tracy Gaines, Manager, Metro Council Business Office



LOUISVILLE METRO COUNCIL  
601 WEST JEFFERSON STREET  
LOUISVILLE, KENTUCKY 40202-2741

Arif Panju  
Institute for Justice  
816 Congress Avenue, Ste. 960  
Austin, TX 78701



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# Exhibit D

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000083 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000045 of 000093



LOUISVILLE METRO COUNCIL  
CLERK'S OFFICE

H. STEPHEN OTT  
CLERK OF THE COUNCIL

December 7, 2018

Arif Panju  
816 Congress Avenue, Suite 960  
Austin, TX 78701  
(512) 480-5936

Dear Mr. Panju:

We are in receipt of your November 1 and 2, 2018 Open Records Requests. Pursuant to KRS 61.872(6), Louisville Metro Council Members Coan, Mulvihill, Reed, and Sexton Smith are denying your November 1 request as it is an improperly framed open records request and because compliance would create an unreasonable burden on the agency.

The Attorney General has held that as a precondition to inspection, "a requesting party must identify with 'reasonable particularity' those documents which he or she wishes to review." 05-ORD-014, p.3. Your request for all documents and communications referencing specific search terms is more properly characterized as "a request for research to be performed, rather than an inspection of reasonably described public records." *Id.* Public agencies are not required to carry out research in response to an Open Records Request. *Id.*

Further, upon coordinating an electronic search utilizing the search terms you provided, approximately 8,300 records were uncovered. Producing these records would require an extraordinary amount of time as each record would be reviewed for, at least, attorney-client privileged information and personal information exempt pursuant to KRS 61.878(1)(a).

In response to your November 2 request, the research referred to in O-347-18 has been provided to me. Standard copy fees are \$0.10 per page or if you prefer an electronic copy, the standard fee is \$2.00 per CD. The research makes up 286 number of pages. To mail the hard copies it will cost \$28.60 (plus shipping costs) or to mail the CD will cost a total of \$3.50 (this includes shipping costs). If you would like a copy of the research, please contact my office and provide exact payment via cash or check to the Louisville Metro Government. My contact information follows:

H. Stephen Ott, CKMC, Clerk  
Metro Council Clerk's Office  
601 W. Jefferson Street | Louisville, KY 40202  
P: (502) 574-3085 F: (502) 574-3363  
[Stephen.ott@louisvilleky.gov](mailto:Stephen.ott@louisvilleky.gov)

601 WEST JEFFERSON STREET, 1ST FLOOR LOUISVILLE, KENTUCKY 40202

502-574-3085 502-574-3363 FAX STEPHEN L. NICHOLSON, JEFFERSON CIRCUIT CLERK

Sincerely,



H. Stephen Ott  
Clerk for the  
Louisville Metro Council

Cc: Lisa Franklin Gray, Metro Council Open Records Coordinator  
Council Member Brandon Coan  
Council Member Patrick Mulvihill  
Council Member Scott Reed  
Council Member Barbara Sexton Smith  
Sean Dennis, Jefferson County Attorney's Office  
Annale Renneker, Jefferson County Attorney's Office



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Brandon Coan in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Coan co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Coan seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Coan and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Coan, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Coan (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Coan (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Coan violated the 3-day response deadline.

letter states that the search terms contained in my open records request to Mr. Coan yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Coan's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Coan (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Coan to produce the requested records.

Mr. Coan's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Coan relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Coan's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Coan does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Coan's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact


<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Coan presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Coan along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Coan’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Coan’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Coan identified as responsive in order to redact personal information—indeed, review of Mr. Coan’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Coan’s bare assertions of speculative privacy concerns.

Councilmember Coan is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Coan’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice



# Exhibit A

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000089 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000051 of 000093



## INSTITUTE FOR JUSTICE

November 1, 2018

**Via First-Class Mail**

Council Member Brandon Coan  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Open Records Request**

Mr. Coan:

I request the following information from you pursuant to Kentucky Open Records Act, § 61.872, et seq., which guarantees public access to information in the custody of governmental bodies. As you know, the Act requires a response within three (3) business days.

When invoicing me for the following requested information, please address each numbered request discretely, as though each numbered request were an individual open records request.

**Requested Information:**

1. Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18.
2. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
3. Copies of all documents concerning (or referencing) the Louisville Downtown Partnership containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
4. Copies of all documents and communications to or from the Louisville Downtown Partnership (including to or from any of its representatives or employees) containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."

Open Records Request  
Page 1 of 2

ARLINGTON AUSTIN BELLEVUE CHICAGO MIAMI MINNEAPOLIS TEMPE

5. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/or installed by Louisville Metro in 2017.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Sincerely,



Arif Panju  
Institute for Justice

# Exhibit B

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000092 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000054 of 000093



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Scott Reed in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Reed co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Reed seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Reed and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Reed, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Reed (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Reed (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Reed violated the 3-day response deadline.

letter states that the search terms contained in my open records request to Mr. Reed yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Reed's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Reed (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Reed to produce the requested records.

Mr. Reed's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Reed relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Reed's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Reed does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Reed's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact

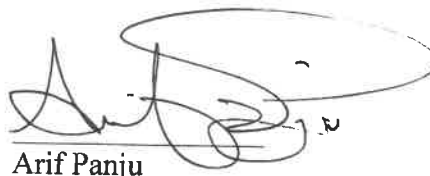
<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Reed presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Reed along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Reed’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Reed’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Reed identified as responsive in order to redact personal information—indeed, review of Mr. Reed’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Reed’s bare assertions of speculative privacy concerns.

Councilmember Reed is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Reed’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Pat Mulvihill in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Mulvihill co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Mulvihill seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Mulvihill and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Mulvihill, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Mulvihill (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Mulvihill (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research."

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Mulvihill violated the 3-day response deadline.



Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial letter states that the search terms contained in my open records request to Mr. Mulvihill yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Mulvihill's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Mulvihill (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Mulvihill to produce the requested records.

Mr. Mulvihill's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Mulvihill relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Mulvihill's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Mulvihill does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Mulvihill's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will

<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden.” *Id.* at 665. Moreover, the fact that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Mulvihill presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Mulvihill along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Mulvihill’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Mulvihill’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Mulvihill identified as responsive in order to redact personal information—indeed, review of Mr. Mulvihill’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.*, 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Mulvihill’s bare assertions of speculative privacy concerns.

Councilmember Mulvihill is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Mulvihill’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Barbara Sexton-Smith in her official capacity as a councilmember on the Louisville Metro Council.

Councilmember Sexton-Smith co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Ms. Sexton-Smith seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Ms. Sexton-Smith and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Ms. Sexton-Smith, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Ms. Sexton-Smith (via her records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Ms. Sexton-Smith (via her records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Ms. Sexton-Smith violated the 3-day response deadline.

("KORA"), the denial letter states that the search terms contained in my open records request to Ms. Sexton-Smith yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Ms. Sexton-Smith's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Ms. Sexton-Smith (through her open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Ms. Sexton-Smith to produce the requested records.

Ms. Sexton-Smith's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Ms. Sexton-Smith relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Ms. Sexton-Smith's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Ms. Sexton-Smith does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Ms. Sexton-Smith's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact

<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Ms. Sexton-Smith presented no evidence that the request she received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in her initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Ms. Sexton-Smith along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Ms. Sexton-Smith’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Ms. Sexton-Smith’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Ms. Sexton-Smith identified as responsive in order to redact personal information—indeed, review of Ms. Sexton-Smith’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Ms. Sexton-Smith’s bare assertions of speculative privacy concerns.

Councilmember Sexton-Smith is in violation of Kentucky’s Open Records Act. She has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Ms. Sexton-Smith’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice

# Exhibit C

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000102 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000064 of 000093



## LOUISVILLE METRO COUNCIL

November 7, 2018

Arif Panju  
Institute for Justice  
816 Congress Avenue, Ste. 960  
Austin, TX 78701

Dear Mr./Ms. Panju:

We are in receipt of your request for records to the Metro Council Clerk and the Districts 4, 8, 10, and 16 Metro Council Offices received November 2, 2018. I have been requested as Open Records Coordinator by Council Members Welch and Fowler to respond to your request.

Your request states the following:

- a. "Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18"
- b. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants"
- c. Copies of all documents concerning (or referencing) the Louisville Downtown Partnership containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants"
- d. Copies of all documents and communications to and from the Louisville Downtown Partnership (including to or from any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants"
- e. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/or installed by Louisville Metro in 2017.

Additionally, you have requested;

- f. Copies of all "research" referred to in O-347-18. See, e.g., <https://louisville.legistar.com/View.ashx?M=F&ID=6675148&GUID=C6747763-4C6F-4DB8-BE8E-5C8AED1819D5> (WHEREAS, research that cities have, at best, made incremental strides in regulating the complexities



## LOUISVILLE METRO COUNCIL

of the itinerant vendor industry, including issues such as parking, noise, traffic, safety, and waste disposal [.]”

Upon receipt of your request, Metro Open Records Response team was contacted to conduct a search of all the aforementioned parties email accounts between June 1, 2017 and November 1, 2018. At this time, the search is in process, but has not yet returned results on the specified search terms, however, with the broad terminology it is expected to yield sizable hits.

Therefore, please be advised that, pursuant to KRS 61.872(5), additional time is necessary to respond to your request. Additionally, the council members and their staff must conduct a search of their documents and/or correspondence for any responsive records. Once the search is completed, responsive emails, letters and documents will need to be reviewed by the council member and staff for exemptions and/or redactions in order to protect against invasions of personal privacy. The earliest date upon which we expect to have the records available for your review is Friday, December 7. However, we will contact you in the event the records become available sooner.

Please let me know if you have questions; I am available during Metro business hours at (502) 574-3902 or [lisa.franklingray@louisvilleky.gov](mailto:lisa.franklingray@louisvilleky.gov) 601 W. Jefferson St., Louisville KY 40202.

Very truly yours,

*Lisa Franklin Gray*

Lisa Franklin Gray  
Open Records Coordinator  
Louisville Metro Council

Cc: Barbara Sexton Smith, District 4 Councilwoman  
Brandon Coan, District 8 Councilman  
Pat Mulvihill, District 10 Councilman  
Scott Reed, District 16 Councilman  
H. Stephen Ott, Council Clerk  
Tracy Gaines, Manager, Metro Council Business Office

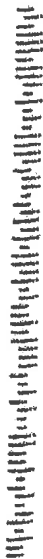




**Arif Panju**  
Institute for Justice  
816 Congress Avenue, Ste. 960  
Austin, TX 78701



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# Exhibit D

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Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000068 of 000093



LOUISVILLE METRO COUNCIL  
CLERK'S OFFICE

H. STEPHEN OTT  
CLERK OF THE COUNCIL

December 7, 2018

Arif Panju  
816 Congress Avenue, Suite 960  
Austin, TX 78701  
(512) 480-5936

Dear Mr. Panju:

We are in receipt of your November 1 and 2, 2018 Open Records Requests. Pursuant to KRS 61.872(6), Louisville Metro Council Members Coan, Mulvihill, Reed, and Sexton Smith are denying your November 1 request as it is an improperly framed open records request and because compliance would create an unreasonable burden on the agency.

The Attorney General has held that as a precondition to inspection, "a requesting party must identify with 'reasonable particularity' those documents which he or she wishes to review." 05-ORD-014, p.3. Your request for all documents and communications referencing specific search terms is more properly characterized as "a request for research to be performed, rather than an inspection of reasonably described public records." *Id.* Public agencies are not required to carry out research in response to an Open Records Request. *Id.*

Further, upon coordinating an electronic search utilizing the search terms you provided, approximately 8,300 records were uncovered. Producing these records would require an extraordinary amount of time as each record would be reviewed for, at least, attorney-client privileged information and personal information exempt pursuant to KRS 61.878(1)(a).

In response to your November 2 request, the research referred to in O-347-18 has been provided to me. Standard copy fees are \$0.10 per page or if you prefer an electronic copy, the standard fee is \$2.00 per CD. The research makes up 286 number of pages. To mail the hard copies it will cost \$28.60 (plus shipping costs) or to mail the CD will cost a total of \$3.50 (this includes shipping costs). If you would like a copy of the research, please contact my office and provide exact payment via cash or check to the Louisville Metro Government. My contact information follows:

H. Stephen Ott, CKMC, Clerk  
Metro Council Clerk's Office  
601 W. Jefferson Street | Louisville, KY 40202  
P: (502) 574-3085 F: (502) 574-3363  
[Stephen.ott@louisvilleky.gov](mailto:Stephen.ott@louisvilleky.gov)

601 WEST JEFFERSON STREET, 1ST FLOOR LOUISVILLE, KENTUCKY 40202

502.574.3085 502.574.3363 FAX STEPHEN.OTT@LOUISVILLEKY.GOV

Sincerely,



H. Stephen Ott  
Clerk for the  
Louisville Metro Council

Cc: Lisa Franklin Gray, Metro Council Open Records Coordinator  
Council Member Brandon Coan  
Council Member Patrick Mulvihill  
Council Member Scott Reed  
Council Member Barbara Sexton Smith  
Sean Dennis, Jefferson County Attorney's Office  
Annale Renneker, Jefferson County Attorney's Office



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Pat Mulvihill in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Mulvihill co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Mulvihill seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Mulvihill and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Mulvihill, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Mulvihill (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Mulvihill (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research."

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Mulvihill violated the 3-day response deadline.

Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial letter states that the search terms contained in my open records request to Mr. Mulvihill yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Mulvihill's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Mulvihill (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Mulvihill to produce the requested records.

Mr. Mulvihill's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Mulvihill relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Mulvihill's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Mulvihill does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Mulvihill's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will

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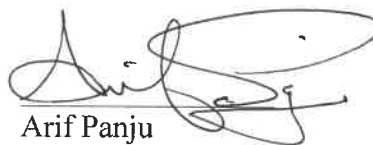
<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden.” *Id.* at 665. Moreover, the fact that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Mulvihill presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Mulvihill along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Mulvihill’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Mulvihill’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Mulvihill identified as responsive in order to redact personal information—indeed, review of Mr. Mulvihill’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Mulvihill’s bare assertions of speculative privacy concerns.

Councilmember Mulvihill is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Mulvihill’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice

# Exhibit A

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000112 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000074 of 000093





## INSTITUTE FOR JUSTICE

November 1, 2018

**Via First-Class Mail**

Council Member Pat Mulvihill  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Open Records Request**

Mr. Mulvihill:

I request the following information from you pursuant to Kentucky Open Records Act, § 61.872, et seq., which guarantees public access to information in the custody of governmental bodies. As you know, the Act requires a response within three (3) business days.

When invoicing me for the following requested information, please address each numbered request discretely, as though each numbered request were an individual open records request.

**Requested Information:**

1. Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18.
2. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
3. Copies of all documents concerning (or referencing) the Louisville Downtown Partnership containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."
4. Copies of all documents and communications to or from the Louisville Downtown Partnership (including to or from any of its representatives or employees) containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants."

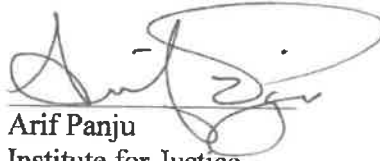
Open Records Request  
Page 1 of 2

ARLINGTON AUSTIN BELLEVUE CHICAGO MIAMI MINNEAPOLIS TEMPE

5. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/or installed by Louisville Metro in 2017.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif Panju', is written over a horizontal line.

Arif Panju  
Institute for Justice

# Exhibit B

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000115 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000077 of 000093



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
 Andy Beshear, Attorney General  
 Open Records - Appeals  
 700 Capitol Avenue, Suite 118  
 Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Brandon Coan in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Coan co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Coan seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Coan and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Coan, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Coan (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Coan (via his records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Mr. Coan violated the 3-day response deadline.

letter states that the search terms contained in my open records request to Mr. Coan yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Coan's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Coan (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Coan to produce the requested records.

Mr. Coan's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Coan relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Coan's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Coan does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Coan's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact


<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Coan presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[.]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Coan along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Coan’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Coan’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Coan identified as responsive in order to redact personal information—indeed, review of Mr. Coan’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Coan’s bare assertions of speculative privacy concerns.

Councilmember Coan is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Coan’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Scott Reed in his official capacity as a councilmember on the Louisville Metro Council.

Councilmember Reed co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Mr. Reed seeking public information in five discrete categories. *See Exhibit A.* I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Mr. Reed and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See Exhibit B.* The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Mr. Reed, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Mr. Reed (via his records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See Exhibit C* (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Mr. Reed (via his records coordinator) denied my November 1, 2018 open records request. *See Exhibit D.* The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act ("KORA"), the denial

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See Exhibit C.* In other words, Mr. Reed violated the 3-day response deadline.

letter states that the search terms contained in my open records request to Mr. Reed yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Mr. Reed's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Mr. Reed (through his open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Mr. Reed to produce the requested records.

Mr. Reed's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Mr. Reed relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Mr. Reed's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Mr. Reed does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Mr. Reed's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact

<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

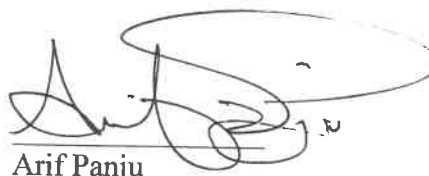


that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Mr. Reed presented no evidence that the request he received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in his initial response that the number of responsive records was “*expected* to yield sizable hits[,]” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Mr. Reed along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Mr. Reed’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Mr. Reed’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Mr. Reed identified as responsive in order to redact personal information—indeed, review of Mr. Reed’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Mr. Reed’s bare assertions of speculative privacy concerns.

Councilmember Reed is in violation of Kentucky’s Open Records Act. He has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Mr. Reed’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

April 5, 2019

Office of the Attorney General  
Andy Beshear, Attorney General  
Open Records - Appeals  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601-3449

**RE: Appeal of Open Records Request Denial**

Dear Attorney General Beshear:

Pursuant to Kentucky Open Records Act § 61.880(2), I request that the Attorney General review the denial of my open records request submitted to Barbara Sexton-Smith in her official capacity as a councilmember on the Louisville Metro Council.

Councilmember Sexton-Smith co-authored (with three additional councilmembers) a proposed ordinance that seeks to stifle the ability of food trucks to operate in Louisville. On November 1, 2018, I submitted an open records request to Ms. Sexton-Smith seeking public information in five discrete categories. *See* Exhibit A. I also submitted identical requests to three separate councilmembers. As noted below, although these were separate open records requests, Ms. Sexton-Smith and the Louisville Metro Council's records coordinator grouped all four together and denied each in a single letter. Accordingly, in addition to this appeal, I am also separately appealing the denial of the requests sent to the three additional councilmembers. *See* Exhibit B. The issues raised in those three appeals are identical to those raised in this appeal.

In addition to my open records request to Ms. Sexton-Smith, I've attached the two letters received in response to my open records request.

First, on November 7, 2018, Ms. Sexton-Smith (via her records coordinator) responded to my open records request by informing me that "additional time is necessary to respond" because the alleged "broad terminology" contained in the requests was "*expected* to yield sizable hits."<sup>1</sup> *See* Exhibit C (emphasis added). The letter notes that the "earliest date upon which we expect to have records available for your review is Friday, December 7." *Id.*

Second, on December 7, 2018, Ms. Sexton-Smith (via her records coordinator) denied my November 1, 2018 open records request. *See* Exhibit D. The stated basis for the denial is that my open records request seeks communications containing specific words and thus constitutes "research." Without actually invoking any exception to Kentucky's Open Records Act

<sup>1</sup> Notwithstanding the improper reliance on speculation about what was "expected" to happen if a search for the requested public records actually took place, it bears noting that the initial response letter is dated November 7, 2018 but postmarked five days later on November 12, 2018. *See* Exhibit C. In other words, Ms. Sexton-Smith violated the 3-day response deadline.

("KORA"), the denial letter states that the search terms contained in my open records request to Ms. Sexton-Smith yielded 8,300 results (when combined with the three separate open records requests that were submitted to *other* public officials), and that it would take a long time to review each record for private information.

Ms. Sexton-Smith's failure to comply with my open records request violates Kentucky law. The availability of responsive records is not a basis for denying a request. Nor does the open records request contained in Exhibit A constitute a request for research. Below, I first address the flawed grounds invoked by Ms. Sexton-Smith (through her open records coordinator) in denying my request. Second, I explain why the Attorney General should grant this appeal and direct Ms. Sexton-Smith to produce the requested records.

Ms. Sexton-Smith's claim that the open records request contained in Exhibit A constitutes "research" is wrong. The denial letter invokes 05-ORD-014 in support of this argument but the opinion is easily distinguishable. The 2005 case Ms. Sexton-Smith relies on involved a request in which the requested records were described without "reasonable particularity" so "the Division *could not estimate the number of records* encompassed by the request or the amount of time its employees would expend in locating, retrieving and producing any responsive records in its custody." 05-ORD-014 at 6 (emphasis added). Thus, that request failed the reasonable particularity requirement. *Id.* By contrast, Ms. Sexton-Smith's own denial letter contains the number of records encompassed by the request: 8,300. Accordingly, and notwithstanding the impropriety of generating the 8,300 total by adding in responsive records from three separate requests sent to other councilmembers,<sup>2</sup> my open records request to Ms. Sexton-Smith does not constitute "research" and reliance on 05-ORD-014 is unpersuasive here.

Ms. Sexton-Smith's denial letter also claims that providing the requested records would be burdensome due to the volume and personal information involved. The denial letter does not actually invoke an exemption contained in KORA. More importantly, however, no exemption applies here. The underlying policy of the Kentucky Open Records Act is that "free and open examination of public records is in the public interest" and the exemptions "shall be strictly construed." Ky. Rev. Stat. Ann. § 61.871. In an analogous case addressed by the Attorney General in 17-ORD-272, a request was made for all records and communications regarding a "Night of Prayer," *id.* at 4. The agency denied the request because it claimed it was overly burdensome and contained personal details. *Id.* The Attorney General firmly rejected the agency's arguments. Evaluating the burdensome requirement, the opinion emphasized the high burden on the agency and that invoking a large volume of documents is not enough:

Denial of the right of inspection under this provision must be supported by clear and convincing evidence, and the public agency that attempts to do so "faces a high proof threshold." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 664 (Ky. 2008). "[T]he obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden." *Id.* at 665. Moreover, the fact

<sup>2</sup> Notably, the 8,300 responsive records is a sum that results from improperly combining four separate requests sent to four separate elected officials; the practical effect of improperly combining the responsive records in this manner is to mask which official has what number of responsive documents.

that the responsive records “are voluminous does not mean that it would necessarily be unreasonable [for an agency] to comply with an otherwise valid open records request.” *Id.* at 666. LCCC presents no evidence, clear and convincing or otherwise, that Appellant’s requests are unreasonably burdensome or intended to disrupt its essential functions. “A bare allegation that a request is unreasonably burdensome or intended to disrupt essential functions does not satisfy the requirements of the statute.” 10-ORD-203, p. 3 (citing 06-ORD-177). LCCC’s denial, on the basis that the request is overly burdensome, fails as LCCC provided no evidence or argument that complying with the request was overly burdensome.

Similarly, Ms. Sexton-Smith presented no evidence that the request she received on November 1, 2018 was unreasonably burdensome. To the contrary, after speculating in her initial response that the number of responsive records was “*expected to yield sizable hits[,]*” *see* Exhibit C, the denial letter appears to back into that conclusion, post-hoc, by combining responsive records for Ms. Sexton-Smith along with those from three separate open records requests sent to *other public officials*, *see* Exhibit D.

Nor do Ms. Sexton-Smith’s speculative privacy concerns justify denying my open records request. The Attorney General has rejected attempts to raise speculative privacy concerns to avoid producing public records. *See* 17-ORD-272. The “general bias favoring disclosure” must be weighed against “unwarranted invasion of personal privacy” *Id.* at 4–5. As with Ms. Sexton-Smith’s denial, the governmental entity in 17-ORD-272 “provided no hint as to what privacy interests would be at risk by the release of the requested records. Without some explanation of the privacy interests implicated by release of the records, the public’s interest in the records must prevail in the comparative weighing of the antagonistic interests.” *Id.* at 5. The review of the 8,300 records Ms. Sexton-Smith identified as responsive in order to redact personal information—indeed, review of Ms. Sexton-Smith’s *portion* of those 8,300 responsive records—is far from the type of request that the Attorney General has considered too burdensome. *See, e.g.,* 17-ORD-104 (finding an unreasonable burden when review consisted of evaluating 225 million responsive records for mandatory exemptions under Kentucky Family Education Rights Privacy Act). No such burden exists here. Thus, the Attorney General should reject Ms. Sexton-Smith’s bare assertions of speculative privacy concerns.

Councilmember Sexton-Smith is in violation of Kentucky’s Open Records Act. She has no legitimate basis for denying the open records request contained in Exhibit A. The Attorney General should reject Ms. Sexton-Smith’s denial of my open records request and order that these public records be produced.



Arif Panju  
Institute for Justice

# Exhibit C

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000125 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000087 of 000093



## LOUISVILLE METRO COUNCIL

November 7, 2018

Arif Panju  
Institute for Justice  
816 Congress Avenue, Ste. 960  
Austin, TX 78701

Dear Mr./Ms. Panju:

We are in receipt of your request for records to the Metro Council Clerk and the Districts 4, 8, 10, and 16 Metro Council Offices received November 2, 2018. I have been requested as Open Records Coordinator by Council Members Welch and Fowler to respond to your request.

Your request states the following:

- a. "Copies of all documents and communications concerning (or referencing) the proposed ordinance O-347-18"
- b. Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants"
- c. Copies of all documents concerning (or referencing) the Louisville Downtown Partnership containing any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants"
- d. Copies of all documents and communications to and from the Louisville Downtown Partnership (including to or from any of the following words: (1) "food truck"; (2) "food trucks"; (3) "vendor"; (4) "vendors"; (5) "vending"; (6) "restaurant"; or (7) "restaurants"
- e. All documents and communications concerning or referencing the "No Food Trucks" signs authorized and/or installed by Louisville Metro in 2017.

Additionally, you have requested;

- f. Copies of all "research" referred to in O-347-18. See, e.g., <https://louisville.legistar.com/View.ashx?M=F&ID=6675148&GUID=C6747763-4C6F-4DB8-BE8E-5C8AED1819D5> (WHEREAS, research that cities have, at best, made incremental strides in regulating the complexities



## LOUISVILLE METRO COUNCIL

**of the itinerant vendor industry, including issues such as parking, noise, traffic, safety, and waste disposal [.]”**

Upon receipt of your request, Metro Open Records Response team was contacted to conduct a search of all the aforementioned parties email accounts between June 1, 2017 and November 1, 2018. At this time, the search is in process, but has not yet returned results on the specified search terms, however, with the broad terminology it is expected to yield sizable hits.

Therefore, please be advised that, pursuant to KRS 61.872(5), additional time is necessary to respond to your request. Additionally, the council members and their staff must conduct a search of their documents and/or correspondence for any responsive records. Once the search is completed, responsive emails, letters and documents will need to be reviewed by the council member and staff for exemptions and/or redactions in order to protect against invasions of personal privacy. The earliest date upon which we expect to have the records available for your review is Friday, December 7. However, we will contact you in the event the records become available sooner.

Please let me know if you have questions; I am available during Metro business hours at (502) 574-3902 or [lisa.franklingray@louisvilleky.gov](mailto:lisa.franklingray@louisvilleky.gov) 601 W. Jefferson St., Louisville KY 40202.

Very truly yours,

*Lisa Franklin Gray*

Lisa Franklin Gray  
Open Records Coordinator  
Louisville Metro Council

Cc: Barbara Sexton Smith, District 4 Councilwoman  
Brandon Coan, District 8 Councilman  
Pat Mulvihill, District 10 Councilman  
Scott Reed, District 16 Councilman  
H. Stephen Ott, Council Clerk  
Tracy Gaines, Manager, Metro Council Business Office



LOUISVILLE METRO COUNCIL  
601 WEST JEFFERSON STREET  
LOUISVILLE, KENTUCKY 40202-2741

Arif Panju  
Institute for Justice  
816 Congress Avenue, Ste. 960  
Austin, TX 78701

7870132475 0007





# Exhibit D

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000129 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000091 of 000093



LOUISVILLE METRO COUNCIL  
CLERK'S OFFICE

H. STEPHEN OTT  
CLERK OF THE COUNCIL

December 7, 2018

Arif Panju  
816 Congress Avenue, Suite 960  
Austin, TX 78701  
(512) 480-5936

Dear Mr. Panju:

We are in receipt of your November 1 and 2, 2018 Open Records Requests. Pursuant to KRS 61.872(6), Louisville Metro Council Members Coan, Mulvihill, Reed, and Sexton Smith are denying your November 1 request as it is an improperly framed open records request and because compliance would create an unreasonable burden on the agency.

The Attorney General has held that as a precondition to inspection, "a requesting party must identify with 'reasonable particularity' those documents which he or she wishes to review." 05-ORD-014, p.3. Your request for all documents and communications referencing specific search terms is more properly characterized as "a request for research to be performed, rather than an inspection of reasonably described public records." *Id.* Public agencies are not required to carry out research in response to an Open Records Request. *Id.*

Further, upon coordinating an electronic search utilizing the search terms you provided, approximately 8,300 records were uncovered. Producing these records would require an extraordinary amount of time as each record would be reviewed for, at least, attorney-client privileged information and personal information exempt pursuant to KRS 61.878(1)(a).

In response to your November 2 request, the research referred to in O-347-18 has been provided to me. Standard copy fees are \$0.10 per page or if you prefer an electronic copy, the standard fee is \$2.00 per CD. The research makes up 286 number of pages. To mail the hard copies it will cost \$28.60 (plus shipping costs) or to mail the CD will cost a total of \$3.50 (this includes shipping costs). If you would like a copy of the research, please contact my office and provide exact payment via cash or check to the Louisville Metro Government. My contact information follows:

H. Stephen Ott, CKMC, Clerk  
Metro Council Clerk's Office  
601 W. Jefferson Street | Louisville, KY 40202  
P: (502) 574-3085 F: (502) 574-3363  
[Stephen.ott@louisvilleky.gov](mailto:Stephen.ott@louisvilleky.gov)

601 WEST JEFFERSON STREET, 1ST FLOOR LOUISVILLE, KENTUCKY 40202

502.574.3085 502.574.3363 FAX STEPHEN.OTT@LOUISVILLEKY.GOV

Sincerely,



H. Stephen Ott  
Clerk for the  
Louisville Metro Council

Cc: Lisa Franklin Gray, Metro Council Open Records Coordinator  
Council Member Brandon Coan  
Council Member Patrick Mulvihill  
Council Member Scott Reed  
Council Member Barbara Sexton Smith  
Sean Dennis, Jefferson County Attorney's Office  
Annale Renneker, Jefferson County Attorney's Office

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000131 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000093 of 000093

# EXHIBIT F

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000132 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000001 of 000005



## INSTITUTE FOR JUSTICE

May 16, 2019

**Via First-Class Mail and Email**

Council Member Barbara Sexton Smith  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Attorney General Opinion 19-ORD-084**

Councilmember Sexton-Smith:

As you know, the Office of the Attorney General for the Commonwealth of Kentucky issued its opinion in 19-ORD-084 and concluded that your office “violated the [Kentucky] Open Records Act by denying item 2” of my open records request submitted to you on November 1, 2018. As the attached opinion explains, the Attorney General rejected your basis for denying the following open records request:

Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) “food truck”; (2) “food trucks”; (3) “vendor”; (4) “vendors”; (5) “vending”; (6) “restaurant”; or (7) “restaurants.”

Pursuant to the Kentucky Open Records Act, I request that all documents responsive to this request be produced without further delay.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

May 16, 2019

**Via First-Class Mail and Email**

Council Member Scott Reed  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Attorney General Opinion 19-ORD-084**

Councilmember Reed:

As you know, the Office of the Attorney General for the Commonwealth of Kentucky issued its opinion in 19-ORD-084 and concluded that your office “violated the [Kentucky] Open Records Act by denying item 2” of my open records request submitted to you on November 1, 2018. As the attached opinion explains, the Attorney General rejected your basis for denying the following open records request:

Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) “food truck”; (2) “food trucks”; (3) “vendor”; (4) “vendors”; (5) “vending”; (6) “restaurant”; or (7) “restaurants.”

Pursuant to the Kentucky Open Records Act, I request that all documents responsive to this request be produced without further delay.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

May 16, 2019

**Via First-Class Mail and Fax**

Council Member Brandon Coan  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Attorney General Opinion 19-ORD-084**

Councilmember Coan:

As you know, the Office of the Attorney General for the Commonwealth of Kentucky issued its opinion in 19-ORD-084 and concluded that your office “violated the [Kentucky] Open Records Act by denying item 2” of my open records request submitted to you on November 1, 2018. As the attached opinion explains, the Attorney General rejected your basis for denying the following open records request:

Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) “food truck”; (2) “food trucks”; (3) “vendor”; (4) “vendors”; (5) “vending”; (6) “restaurant”; or (7) “restaurants.”

Pursuant to the Kentucky Open Records Act, I request that all documents responsive to this request be produced without further delay.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Arif Panju  
Institute for Justice



## INSTITUTE FOR JUSTICE

May 16, 2019

**Via First-Class Mail and Email**

Council Member Pat Mulvihill  
Attn: Open Record Request  
601 West Jefferson Street  
Louisville, KY 40202

**RE: Attorney General Opinion 19-ORD-084**

Councilmember Mulvihill:

As you know, the Office of the Attorney General for the Commonwealth of Kentucky issued its opinion in 19-ORD-084 and concluded that your office “violated the [Kentucky] Open Records Act by denying item 2” of my open records request submitted to you on November 1, 2018. As the attached opinion explains, the Attorney General rejected your basis for denying the following open records request:

Copies of all documents reflecting communications (sent or received by you or your staff) between June 1, 2017 and November 1, 2018 containing any of the following words: (1) “food truck”; (2) “food trucks”; (3) “vendor”; (4) “vendors”; (5) “vending”; (6) “restaurant”; or (7) “restaurants.”

Pursuant to the Kentucky Open Records Act, I request that all documents responsive to this request be produced without further delay.

Please do not hesitate to contact me at [apanju@ij.org](mailto:apanju@ij.org) or (512) 480-5936 if you have any questions.

Arif Panju  
Institute for Justice



# EXHIBIT G

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000137 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000001 of 000005

**Tracking Number:** 9114901496451084991230

Your item was picked up at a postal facility at 4:49 am on May 21, 2019 in LOUISVILLE, KY 40201.

## Delivered

May 21, 2019 at 4:49 am

Delivered, Individual Picked Up at Postal Facility

LOUISVILLE, KY 40201

**Get Updates**

---

### Text & Email Updates

---

### Tracking History

**May 21, 2019, 4:49 am**

Delivered, Individual Picked Up at Postal Facility

LOUISVILLE, KY 40201

Your item was picked up at a postal facility at 4:49 am on May 21, 2019 in LOUISVILLE, KY 40201.

**May 18, 2019, 8:01 pm**

Departed USPS Facility

LOUISVILLE, KY 40221

**May 18, 2019, 3:16 pm**

Arrived at USPS Facility

LOUISVILLE, KY 40221

**May 17, 2019, 2:34 am**

Departed USPS Regional Facility

AUSTIN TX DISTRIBUTION CENTER

**May 16, 2019, 10:04 pm**

Arrived at USPS Regional Facility

AUSTIN TX DISTRIBUTION CENTER

---

**Tracking Number:** 9114901496451084991247

Your item was delivered to an individual at the address at 2:23 pm on May 20, 2019 in LOUISVILLE, KY 40202.

## Delivered

May 20, 2019 at 2:23 pm  
Delivered, Left with Individual  
LOUISVILLE, KY 40202

**Get Updates**

---

### Text & Email Updates

---

### Tracking History

**May 20, 2019, 2:23 pm**  
Delivered, Left with Individual  
LOUISVILLE, KY 40202

Your item was delivered to an individual at the address at 2:23 pm on May 20, 2019 in LOUISVILLE, KY 40202.

**May 20, 2019**  
In Transit to Next Facility

**May 18, 2019, 8:00 pm**  
Departed USPS Facility  
LOUISVILLE, KY 40221

**May 18, 2019, 3:27 pm**  
Arrived at USPS Facility  
LOUISVILLE, KY 40221

---

**Tracking Number:** 9114901496451084991254

Your item was delivered to an individual at the address at 2:23 pm on May 20, 2019 in LOUISVILLE, KY 40202.

## Delivered

May 20, 2019 at 2:23 pm  
Delivered, Left with Individual  
LOUISVILLE, KY 40202

[Get Updates](#)

---

### Text & Email Updates

---

### Tracking History

**May 20, 2019, 2:23 pm**

Delivered, Left with Individual  
LOUISVILLE, KY 40202

Your item was delivered to an individual at the address at 2:23 pm on May 20, 2019 in LOUISVILLE, KY 40202.

**May 20, 2019**

In Transit to Next Facility

**May 18, 2019, 7:59 pm**

Departed USPS Facility  
LOUISVILLE, KY 40221

**May 18, 2019, 3:14 pm**

Arrived at USPS Facility  
LOUISVILLE, KY 40221

**May 17, 2019, 2:34 am**

Departed USPS Regional Facility  
AUSTIN TX DISTRIBUTION CENTER

**May 16, 2019, 10:04 pm**

Arrived at USPS Regional Facility  
AUSTIN TX DISTRIBUTION CENTER

---

**Tracking Number:** 9114901496451084991261

Your item was delivered to an individual at the address at 2:23 pm on May 20, 2019 in LOUISVILLE, KY 40202.

## Delivered

May 20, 2019 at 2:23 pm  
Delivered, Left with Individual  
LOUISVILLE, KY 40202

[Get Updates](#)

---

### Text & Email Updates

---

### Tracking History

**May 20, 2019, 2:23 pm**  
Delivered, Left with Individual  
LOUISVILLE, KY 40202

Your item was delivered to an individual at the address at 2:23 pm on May 20, 2019 in LOUISVILLE, KY 40202.

**May 20, 2019**  
In Transit to Next Facility

**May 18, 2019, 7:59 pm**  
Departed USPS Facility  
LOUISVILLE, KY 40221

**May 18, 2019, 3:14 pm**  
Arrived at USPS Facility  
LOUISVILLE, KY 40221

**May 17, 2019, 2:34 am**  
Departed USPS Regional Facility  
AUSTIN TX DISTRIBUTION CENTER

**May 16, 2019, 10:04 pm**  
Arrived at USPS Regional Facility  
AUSTIN TX DISTRIBUTION CENTER

---

# EXHIBIT H

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000142 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000001 of 000002



**MIKE O'CONNELL**  
**JEFFERSON COUNTY ATTORNEY**

531 Court Place, Suite 900  
Louisville, KY 40202

(502) 574-6333  
Fax (502) 574-5573

Julie Lott Hardesty  
First Assistant

May 17, 2019

Mr. Arif Panju  
Institute for Justice  
816 Congress Ave., Ste. 960  
Austin, TX 78701  
VIA: U.S. Prepaid Postage Only

RE: Attorney General Opinion 19-ORD-084

Dear Mr. Panju:

I am writing to you on behalf of Councilman Pat Mulvihill in response to your May 16, 2019 letter. Mr. Mulvihill is in receipt of the Attorney General's Opinion and is gathering the responsive records for production. You will be notified of the cost of the reproduction and postage upon completion. Once payment is received, the records will be mailed to you.

Sincerely,

Annale R. Taylor  
Assistant Jefferson County Attorney

# EXHIBIT I

9B8A3C9C-E606-4EDC-A72B-17A252592C3F : 000144 of 000151

Presiding Judge: HON. BARRY WILLETT (630175)

EXH : 000001 of 000003



NO.

JEFFERSON CIRCUIT COURT  
DIVISION \_\_\_\_\_  
JUDGE \_\_\_\_\_***ELECTRONICALLY FILED***INSTITUTE FOR JUSTICE  
901 N. Glebe Road  
Arlington, VA 22203

PLAINTIFF

v.

BRANDON COAN, *et al.*

DEFENDANTS

**AFFIDAVIT OF ARIF PANJU**

I, Arif Panju, being first duly sworn upon his oath, deposes and says:

1. I am a resident of the state of Texas and make the representations contained herein based upon my personal knowledge.
2. I am a Managing Attorney with the Institute for Justice ("IJ"), headquartered in Arlington, Virginia.
3. On November 1, 2018, on behalf of IJ, I requested from Louisville Metro Councilmembers Coan, Mulvihill, Reed and Sexton-Smith (collectively, the "Councilmembers") copies of certain records relating to proposed Louisville Ordinance O-347-18. A true copy of the open records request is attached to the Complaint as Exhibit D.
4. On November 12, 2018, the Councilmembers responded to the open records request stating that the responsive records would be available on December 7, 2018; however, they did not respond and the Metro Council Clerk denied the open records request stating that there were approximately 8,300 documents responsive to the open record request.
5. On April 5, 2019, on behalf of IJ, I filed an appeal of the Councilmembers' denial of the open records request with the Kentucky Attorney General.

6. On May 9, 2019, in response to the Appeal, the Kentucky Attorney General issued its Open Records Decision, 19-ORD-084 that I then provided to the Councilmembers via USPS delivery.

7. On May 19, 2019 Councilmember Mulvihill provided a response to my letter and stated he would comply with the Kentucky Attorney General's Open Records Decision, 19-ORD-084. However, as of the date of this affidavit, IJ has not received any documents from Councilmember Mulvihill.

8. As of the date of this affidavit, IJ has not received any documents from any Councilmembers, nor have any Councilmembers indicated that they would produce any documents.

FURTHER AFFIANT SAYETH NAUGHT.

Arif Panju

STATE OF TEXAS )

COUNTY OF )

The foregoing instrument was acknowledged before me this 15 day of July, 2019, by Arif Panju.

My commission expires: 12/27/2020

Notary ID: 130943265



K. Morton  
NOTARY PUBLIC



**CIVIL SUMMONS**

Case #: **19-CI-004289**

Court: **CIRCUIT**

County: **JEFFERSON Circuit**

*Plaintiff, INSTITUTE FOR JUSTICE VS. COAN, BRANDON, ET AL, Defendant*

**TO: BRANDON COAN  
LOUISVILLE METRO COUNCILMEMBER, DIST 8  
601 W JEFFERSON ST  
LOUISVILLE, KY 40202**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Jefferson Circuit Clerk

Date: **7/16/2019**

**Proof of Service**

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

☐ Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Served By

\_\_\_\_\_  
Title





**CIVIL SUMMONS**

Case #: **19-CI-004289**

Court: **CIRCUIT**

County: **JEFFERSON Circuit**

*Plaintiff, INSTITUTE FOR JUSTICE VS. COAN, BRANDON, ET AL, Defendant*

**TO: PAT MULVIHILL  
LOUISVILLE METRO COUNCILMEMBER, DIST 10  
601 W.JEFFERSON ST.  
LOUISVILLE, KY 40202**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Jefferson Circuit Clerk

Date: **7/16/2019**

**Proof of Service**

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

☐ Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Served By

\_\_\_\_\_  
Title





**CIVIL SUMMONS**

Case #: **19-CI-004289**

Court: **CIRCUIT**

County: **JEFFERSON Circuit**

*Plaintiff, INSTITUTE FOR JUSTICE VS. COAN, BRANDON, ET AL, Defendant*

**TO: SCOTT REED**  
**LOUISVILLE METRO COUNCILMEMBER, DIST 16**  
**601 W. JEFFERSON ST**  
**LOUISVILLE, KY 40202**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Jefferson Circuit Clerk

Date: **7/16/2019**

**Proof of Service**

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

☐ Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Served By

\_\_\_\_\_  
Title





Commonwealth of Kentucky  
David L. Nicholson, Jefferson Circuit Clerk

Case #: 19-CI-004289

Envelope #: 1766097

Received From: APRIL WIMBERG

Account Of: APRIL WIMBERG

Case Title: INSTITUTE FOR JUSTICE VS. COAN, BRANDO ET AL

Confirmation Number: 93748870

Filed On 7/16/2019 7:59:10AM

#	Item Description	Amount
1	Access To Justice Fee	\$20.00
2	Civil Filing Fee	\$150.00
3	Money Collected For Others(Court Tech. Fee)	\$20.00
4	Library Fee	\$3.00
5	Money Collected For Others(Attorney Tax Fee)	\$5.00
6	Money Collected For Others(Postage)	\$65.80
7	Charges For Services(Copy - Photocopy)	\$59.20
TOTAL:		\$323.00



**CIVIL SUMMONS**

Case #: **19-CI-004289**

Court: **CIRCUIT**

County: **JEFFERSON Circuit**

*Plaintiff, INSTITUTE FOR JUSTICE VS. COAN, BRANDON, ET AL, Defendant*

**TO: BARBARA SEXTON-SMITH  
LOUISVILLE METRO COUNCILMEMBER, DIST 4  
601 W. JEFFERSON ST  
LOUISVILLE, KY 40202**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Jefferson Circuit Clerk

Date: **7/16/2019**

**Proof of Service**

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

☐ Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Served By

\_\_\_\_\_  
Title

