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IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

FOURTH JUDICIAL CIRCUIT, DIVISION ___

[redacted]

Plaintiff,

v. Case No. 72CV-26-2120

CITY OF ELKINS, ARKANSAS,
a municipal corporation,
Defendant.

AMENDED PETITION FOR ENFORCEMENT OF

THE ARKANSAS FREEDOM OF INFORMATION ACT
Ark. Code Ann. § 25-19-101 et seq.

I. PARTIES

1. Plaintiff [redacted] is a citizen of the State of Arkansas and a resident of Washington County, Arkansas.

2. Defendant City of Elkins, Arkansas is a municipal corporation and public entity subject to the Arkansas Freedom of Information Act ("FOIA"), Ark. Code Ann. § 25-19-101 et seq.

3. At all relevant times, the City Clerk of the City of Elkins was the custodian of public records for purposes of the Arkansas Freedom of Information Act. The City's obligations under FOIA extend to all public records created, received, or maintained by its officers, employees, agents, or representatives in the transaction of public business, regardless of which individual employee possesses or controls the record.

4. Plaintiff has caused service of this Amended Petition upon the City of Elkins through authorized municipal officers, including the Mayor and City Clerk, by personal service through the Washington County Sheriff, as permitted by Arkansas Rule of Civil Procedure 4.

II. JURISDICTION AND VENUE

5. This action is brought pursuant to Ark. Code Ann. § 25-19-107.

6. This Court has subject-matter jurisdiction over this FOIA enforcement action.

7. Venue is proper in Washington County Circuit Court.

III. FACTUAL BACKGROUND

8. On April 2, 2026, Plaintiff submitted a written FOIA request to the City of Elkins seeking public records relating to the residential property located at [redacted] Ln, Elkins, Arkansas.

9. The FOIA request expressly sought records indexed under Lot [redacted] and/or Lot [redacted] as City-maintained records and subdivision plats reflected inconsistencies regarding the lot designation associated with the same physical structure.

10. At all relevant times, Plaintiff's FOIA request sought records relating to the physical structure located at [redacted] Ln, regardless of whether such records were indexed under Lot [redacted] Lot [redacted], or any other designation assigned to that location.

11. The FOIA request sought, among other categories, lot-specific and property-specific records relating to the physical structure located at [redacted] Ln, including but not limited to:
    a. Emails, text messages, and other communications;
    b. Complaints, concerns, or reports received by the City;
    c. Inspection and compliance documentation;
    d. Drainage, grading, floodplain, and engineering records;
    e. Subdivision-level records affecting the property, including records indexed under Lot [redacted] and/or Lot [redacted]

12. Prior to submission of the FOIA request, Plaintiff and Plaintiff's spouse communicated with City staff regarding concerns that the approved drainage plan did not reflect actual site conditions affecting the property.

13. During those communications, City staff indicated that approval of the drainage plan was contingent upon correction of identified issues.

14. Following those communications, Plaintiff's spouse submitted documentation to City staff by email addressing the drainage and grading concerns.

15. City staff communicated with Plaintiff and Plaintiff's spouse regarding lot identification, drainage issues, inspection, and engineering involvement through a combination of City email accounts, personal email accounts, text messages, personal devices, and verbal discussions.

16. After submission of the FOIA request, City staff advised Plaintiff that TC Hull Engineering participated in drainage or engineering matters related to the property.

17. City staff further advised Plaintiff that Garver Engineering participated in engineering or planning review related to the property.

18. City staff also communicated with, or relied upon communications with, the builder and/or developer associated with the property regarding permitting, inspection, drainage, grading, subdivision approval, and compliance matters.

19. The City produced a limited set of documents in response to the FOIA request, primarily consisting of permits, certificates, and subdivision-level materials.

20. The City did not produce the following categories of records:
    a. Emails sent by Plaintiff's spouse to City staff;
    b. Internal City responses or acknowledgments of those emails;
    c. Records reflecting review or disposition of drainage concerns;
    d. Text messages exchanged with City staff;
    e. Inspection notes, checklists, or compliance verification records;
    f. Communications involving TC Hull Engineering, Garver Engineering, or other engineers, consultants, builders, developers, or third parties who created, received, or exchanged communications with the City concerning permitting, inspection, drainage, grading, subdivision approval, or compliance related to the property.

21. Rather than retrieving and producing records involving outside engineers or the builder that were within the City's possession or control, City staff directed Plaintiff to contact TC Hull Engineering directly.

22. Plaintiff submitted written follow-up and clarification requests identifying missing categories of records.

23. City staff represented that the City's response was final.

IV. VIOLATIONS OF THE ARKANSAS FOIA

A. Failure to Produce Records for Lot [redacted]

24. Plaintiff expressly requested records indexed under or relating to Lot [redacted]

25. City-maintained plats identify the property as Lot [redacted]

26. The City produced no such records and did not provide a sworn explanation for their absence.

B. Failure to Produce Complaint and Email Records

27. Plaintiff requested all complaints, concerns, and communications.

28. Plaintiff's spouse submitted emails to City staff raising drainage concerns.

29. The City failed to produce those emails or any internal records reflecting their receipt, review, or disposition.

C. Failure to Conduct a Reasonable Search for Communications

30. City officials and employees exchanged communications concerning public business via City email accounts, personal email accounts, text messages, personal devices, and other non-email methods.

31. The City failed to conduct a reasonable search of:
    a. Text messages;
    b. Personal email accounts;
    c. Personal devices;
    d. Communications with builders, developers, engineers, or consultants.

32. Communications concerning public business constitute public records regardless of the device, account, or medium used.

33. Plaintiff's claim is based not solely on the volume of records produced, but on Defendant's failure to conduct and document a reasonable search reasonably calculated to uncover all responsive public records.

D. Failure to Produce Inspection and Compliance Documentation

34. The City produced permits and approvals but failed to produce supporting inspection documentation.

E. Failure to Search Records Involving Engineering Consultants, Builders, and Third Parties

35. City staff advised Plaintiff that TC Hull Engineering was involved in engineering or drainage matters.

36. City staff further advised Plaintiff that Garver Engineering participated in engineering or planning review.

37. City staff also communicated with or relied upon communications from the builder or developer regarding the property.

38. Despite this information, the City failed to conduct or document a reasonable search for records involving these third parties and failed to provide a sworn explanation.

39. Records created, received, or relied upon by the City from third parties in the course of permitting, subdivision review, inspection, drainage review, or compliance constitute public records under FOIA.

F. Improper Delegation of FOIA Obligations

40. FOIA does not permit a public entity to delegate its disclosure obligations to the requester.

41. By directing Plaintiff to contact TC Hull Engineering rather than producing responsive records or formally denying them, the City failed to comply with FOIA.

G. Failure to Provide Adequate Sworn Explanations

42. The City relied on non-sworn statements rather than providing sworn custodian affidavits describing the scope of searches conducted.

H. Failure to Reconcile Lot Records

43. The City treated the property inconsistently between Lot [redacted] and Lot [redacted]

44. The City produced no documentation explaining this discrepancy.

45. Such reconciliation necessarily requires communication with third parties, including engineers and builders.

46. The City failed to search for or produce such communications.

V. POSSESSION, CUSTODY, AND CONTROL

47. All records described herein were created, received, retained, reviewed, or relied upon by the City in the transaction of public business, or were otherwise within the City's possession, custody, or control at the time of Plaintiff's FOIA request.

48. A public entity may not avoid its obligations under FOIA by asserting lack of awareness of communications conducted by its officers, employees, or agents concerning public business.

VI. SUPPLEMENTAL FACTS REGARDING DEFENDANT'S RESPONSE

49. Plaintiff reviewed Defendant's production and determined that it was incomplete.

50. Plaintiff submitted written follow-up communications identifying deficiencies and requesting additional responsive records.

51. Defendant responded that no additional responsive records exist.

52. Defendant further stated that it was not aware of additional communications, text messages, engineering records, builder communications, or consultant-related materials.

53. Despite these representations, Defendant produced no records involving TC Hull Engineering, Garver Engineering, or the builder or developer.

54. Plaintiff contends that Defendant failed to conduct a reasonable and complete search for public records.

VII. RELIEF REQUESTED

55. Plaintiff respectfully requests that the Court:
    a. Declare that Defendant violated the Arkansas Freedom of Information Act;
    b. Order Defendant to conduct a complete and reasonable search for responsive records;
    c. Order production of all responsive public records;
    d. Require sworn custodian affidavits identifying the custodians, departments, devices, accounts, and record systems searched;
    e. Award costs and reasonable attorney fees as permitted by law;
    f. Grant all other relief the Court deems just and proper.

VIII. EXHIBITS

56. True and correct copies of Plaintiff's FOIA request and subsequent communications are attached as Exhibits A–E.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

[redacted] Josh Booth

Plaintiff

Date: 6-15-26

EXHIBIT A

Plaintiff's Original Arkansas Freedom of Information Act Request

Email dated April 2, 2026

From: [redacted]

Subject: Arkansas FOIA Request – Subdivision Inspection & Drainage Records

Gmail JB [redacted]

Arkansas FOIA Request – Subdivision Inspection & Drainage Records

[redacted] Thu, Apr 2, 2026 at 12:42 PM
To: seiland@elkins.arkansas.gov, troyreed@elkins.arkansas.gov, jddemotte@elkins.arkansas.gov, MandyReed@elkins.arkansas.gov

Arkansas FOIA Request – Records Relating to [redacted] Ln, Elkins, AR

FOIA REQUEST

Pursuant to the Arkansas Freedom of Information Act, Ark. Code Ann. § 25-19-101 et seq., I respectfully request access to, and copies of, all public records related to the residential property located at:

[redacted] Ln, Elkins, Arkansas

For clarity and to ensure full compliance with this request, the residential property located at [redacted] Ln, Elkins, Arkansas is identified as Lot [redacted] within the applicable subdivision.

Records reviewed and produced by the City, the builder, or contractors may inconsistently or incorrectly reference this property as Lot [redacted] due to a known labeling or documentation error. Records referencing Lot [redacted] that correspond to, relate to, or describe the same parcel or improvements as [redacted] / Lot [redacted] are expressly included in this request.

Accordingly, this FOIA request applies to all records responsive under any of the following identifiers, whether used individually or in combination:

- [redacted]
- Lot [redacted]
- Lot [redacted]
- Any internal lot, tract, parcel, or subdivision identifier referring to the same property
- Subdivision-level records affecting or governing the lot on which [redacted] was constructed

Records shall not be excluded or deemed non-responsive solely due to inconsistencies in lot numbering or addressing.

This request additionally includes all records relating to the subdivision in which this property is located, including subdivision approval, development, grading, drainage, and inspection records that reasonably relate to or impact this address, whether or not such records are indexed under the specific lot number.

The records requested include documents involving Rausch Coleman Homes, Lennar Corporation, and any affiliated, predecessor, successor, or related entities, including records created before and after Lennar's acquisition of Rausch Coleman Homes (announced February 10, 2025).

RECORDS REQUESTED

This request includes records from the earliest date such records exist to the present.

1. Communications
All emails, correspondence, memoranda, notes, attachments, and other communications (including electronic communications) between or involving:
- City of Elkins building inspectors
- The Building Inspection Department
- City engineering staff
- City administration
- Rausch Coleman Homes
- Lennar Corporation
- Any contractors, engineers, surveyors, geotechnical firms, or design professionals

To the extent such communications relate to:

- [redacted]
- The subdivision containing [redacted]
- Drainage, grading, site conditions, or foundation concerns affecting the lot or subdivision

2. Inspection Records
All inspection-related records concerning [redacted] and/or the subdivision, including:
- Building inspections
- Foundation inspections
- Site, grading, or drainage inspections
- Final inspections
- Re-inspection records
- Inspection approvals, failures, or conditional approvals
- Inspector notes (handwritten or electronic)

3. Plans, Engineering, and Site Documents
All submitted, reviewed, approved, or amended documents applicable to [redacted] or its subdivision, including:
- Drainage plans
- Stormwater management plans
- Grading plans
- Site plans
- Foundation, soil, or geotechnical reports
- Engineering drawings or calculations
- Any revisions or addenda

4. Permits and Certificates
All permits, approvals, and certificates relating to [redacted] Ln, including:
- Building permits
- Site development or grading permits
- Certificates of Occupancy (COs)
- Temporary Certificates of Occupancy (TCOs)
- Any conditions placed on approvals or certificate issuance

5. Complaints, Reports, and Enforcement
All records of complaints, concerns, reports, or notices received by the City relating to:
- [redacted]
- Other lots within the same subdivision

Including but not limited to complaints involving:
- Drainage or runoff
- Foundation or structural concerns
- Soil stability or erosion
- Water intrusion

This includes complaints from homeowners, third parties, internal staff notes, and any enforcement actions taken or declined.

6. Subdivision-Level Records
Any records concerning subdivision approval, inspection, or oversight that may reasonably affect [redacted] Ln, including:
- Subdivision approval records
- Infrastructure inspections (drainage, grading, stormwater)
- Developer compliance or enforcement documentation

If any responsive records are not indexed specifically under [redacted] Ln, but relate to the subdivision or common drainage and grading systems serving that address, such records are included in this request.

FORMAT & DELIVERY

I request that records be provided electronically (PDF or native electronic format) and delivered via email to:
[redacted]

If any records are withheld or redacted, please identify each record and cite the specific Arkansas FOIA exemption relied upon for each withholding, as required by law.

FEES

If any fees are anticipated, please provide an itemized estimate in advance. I request that duplication fees be waived or minimized where possible.

RESPONSE TIME

As provided by Arkansas law, I expect a response within three (3) business days of receipt of this request.

Please confirm receipt of this FOIA request.

Sincerely,

[redacted]
[redacted]
Elkins, Arkansas

EXHIBIT B

City of Elkins Acknowledgment of FOIA Request

Email dated April 2, 2026

From: JD DeMotte

Subject: Re: Arkansas FOIA Request – Subdivision Inspection & Drainage Records

Gmail JB [redacted]

Arkansas FOIA Request – Subdivision Inspection & Drainage Records

Jd Demotte <jddemotte@elkins.arkansas.gov> Thu, Apr 2, 2026 at 4:16 PM
To: [redacted]

Sent from my iPhone

Begin forwarded message:

From: Jd Demotte <jddemotte@elkins.arkansas.gov>
Date: April 2, 2026 at 4:06:28 PM CDT
To: Jd Demotte <jddemotte@elkins.arkansas.gov>
Subject: Re: Arkansas FOIA Request – Subdivision Inspection & Drainage Records

John, I have received your FOIA request, City offices are closed tomorrow for Good Friday. City staff will begin working on this Monday. Thank you JD DeMotte
Sent from my iPhone

On Apr 2, 2026, at 4:03 PM, Jd Demotte <jddemotte@elkins.arkansas.gov> wrote:

Sent from my iPhone

Begin forwarded message:

From: Troy Reed <troyreed@elkins.arkansas.gov>
Date: April 2, 2026 at 3:09:42 PM CDT
To: Jd Demotte <jddemotte@elkins.arkansas.gov>, Donna Campbell <donnacampbell@elkins.arkansas.gov>
Subject: Fw: Arkansas FOIA Request – Subdivision Inspection & Drainage Records

FYI

Mayor Troy Reed
City of Elkins, Arkansas

1874 Stokenbury Road
Elkins, AR. 72727
Office (479) [redacted]

From: [redacted]
Sent: Thursday, April 2, 2026 12:42:27 PM
To: [redacted] Eiland <SEiland@elkins.arkansas.gov>; Troy Reed <troyreed@elkins.arkansas.gov>; Jd Demotte <jddemotte@elkins.arkansas.gov>; Mandy Reed <MandyReed@elkins.arkansas.gov>
Subject: Arkansas FOIA Request – Subdivision Inspection & Drainage Records

EXHIBIT C

City of Elkins Document Production Email

Email dated April 7, 2026

From: JD DeMotte

Subject: Drainage plan

Gmail JB [redacted]

Drainage plan

Jddemotte [redacted] Tue, Apr 7, 2026 at 1:39 PM
To: [redacted] Gayla Stahman <gaylastahman@elkins.arkansas.gov>, Donna Campbell <donnacampbell@elkins.arkansas.gov>, Troy Reed <troyreed@elkins.arkansas.gov>

John, I apologize I thought this copy of the drainage study was included earlier. This shows there were no specific areas of concern highlighted to your lot during review by engineers. The city does not have this electronically. I would be happy to meet with you at city hall and let you review this, or you can reach out to Ali Karr with Crafton Tull and she may be able to provide it electronically. [redacted]
To my knowledge the city has no other documentation that pertains to your specific lot.
Thank you JD DeMotte

Sent from my iPhone

EXHIBIT D

Plaintiff's FOIA Clarification and Request for Supplemental Production

Email dated April 7, 2026

From: [redacted]

Subject: FOIA Request – Final Clarification on Lot [redacted] Records and Scope of Search

Gmail JB [redacted]

Drainage plan

[redacted] Tue, Apr 7, 2026 at 2:29 PM
To: Jddemotte [redacted]
Cc: Gayla Stahman <gaylastahman@elkins.arkansas.gov>, Donna Campbell <donnacampbell@elkins.arkansas.gov>, Troy Reed <troyreed@elkins.arkansas.gov>

Subject: FOIA Request – Final Clarification on Lot [redacted] Records and Scope of Search
Property: [redacted] Ln, Elkins, Arkansas

Dear Donna and JD,
Thank you for your prior responses and for providing the subdivision drainage plan.
I am writing one final time to clarify the remaining discrepancies so that the City's response to my Arkansas Freedom of Information Act request is complete and accurate.

Lot Identification and Lot-Specific Records (Lot [redacted] vs. Lot [redacted]
At this time, it remains unclear how the City has determined which lot corresponds to [redacted]
City records inconsistently reference this address as Lot [redacted] and Lot [redacted] and subdivision plats maintained by the City show the structure located on Lot [redacted] While records indexed under Lot [redacted] were produced, the City has not stated whether records indexed or maintained under Lot [redacted] were searched or produced.
Please confirm, in writing:

Which lot number the City identifies as corresponding to [redacted] Ln; and
Whether a records search was conducted for Lot [redacted] including but not limited to:

Drainage and stormwater plans
Grading and as-built drainage documentation
Floodplain or FEMA-related records
Engineering or consultant records
Inspection and compliance records

My original FOIA request expressly required that records associated with both Lot [redacted] and Lot [redacted] be included due to known inconsistencies, and that no responsive records be excluded on that basis.

Other Records Within the Original FOIA Scope
In addition to plans and permits, my original FOIA request also included:

Emails and other communications
Records of complaints, concerns, or reports
Engineering and consultant correspondence (including Garver Engineering and Crafton Tull)
Inspection notes and compliance documentation relied upon in issuing approvals and the Certificate of Occupancy

Please confirm whether these categories of records were searched and produced.
If no responsive records exist for any category, a statement to that effect would be helpful for completeness.

My intent is simply to ensure that all responsive records within the scope of the original FOIA request, including those relating to Lot [redacted] have been properly identified and disclosed.

Thank you for your time and assistance. I appreciate your attention to these final clarifications.
Sincerely,
[redacted]
Elkins, Arkansas
[redacted]

EXHIBIT E

City of Elkins Statement That No Additional Responsive Records Exist

Email dated April 8, 2026

From: Donna Campbell

Subject: Drainage plan

Gmail JB [redacted]

Drainage plan

Donna Campbell <donnacampbell@elkins.arkansas.gov> Wed, Apr 8, 2026 at 3:26 PM
To: JB [redacted]
Cc: Jddemotte [redacted] Gayla Stahman <gaylastahman@elkins.arkansas.gov>, Troy Reed <troyreed@elkins.arkansas.gov>

Dear Mr. [redacted]

Thank you for your clarification on my question below.

Attached you will find pictures of the City-maintained plats for all of [redacted] This is what we received from the Engineering Firm Crafton Tull. It shows your property to be located as Lot [redacted] I did not find any deviation from those records.

Per your request below I have searched all my City emails for any correspondence regarding [redacted] for drainage concerns and I have found none to exist.

To my knowledge there are no other reconciling documents or additional lot-specific records that exist.

Thank you,

Donna Campbell
Admin. Asst.
Elkins City Hall
donnacampbell@elkins.arkansas.gov
1874 Stokenbury Rd
Elkins, AR 72727
Ph. (479) [redacted]
Fax (479) [redacted]

From: [redacted]
Sent: Wednesday, April 8, 2026 11:53 AM
[Quoted text hidden]
[Quoted text hidden]

2 attachments