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72CV-26-2120
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IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

[redacted] PLAINTIFF

v. CASE NO. 72CV-26-2120

CITY OF ELKINS, ARKANSAS DEFENDANT

PLAINTIFF'S MOTION TO COMPEL RESPONSE,

PRODUCTION, IDENTIFICATION OF SEARCH EFFORTS,

AND SWORN SEARCH AFFIDAVITS

COMES NOW Plaintiff, [redacted] and for his Motion to Compel Response, Production, Identification of Search Efforts, and Sworn Search Affidavits, states:

1. This action arises under the Arkansas Freedom of Information Act.

2. The Court conducted a hearing in this matter on August 31, 2026.

3. During the hearing, the parties discussed the records at issue and the Court encouraged efforts to narrow and reduce the scope of the remaining disputes.

4. Following the hearing, Plaintiff reviewed the records previously produced and substantially narrowed and clarified the records sought.

5. On September 3, 2026, Plaintiff provided Defendant with narrowed requests intended to reduce the scope of the dispute and facilitate additional review, search, and production.

6. Plaintiff advised Defendant that he would allow approximately three weeks for review, search, and production before seeking further Court involvement.

7. On September 3, 2026, Defendant's counsel acknowledged receipt of the narrowed requests and represented:

"I will review and begin working on determining what additional,

responsive documents there are and gathering them."

8. Plaintiff relied upon that representation and refrained from seeking immediate Court intervention.

9.Approximately three weeks have now elapsed.

10. Plaintiff has not received meaningful supplementation, production, objections, or an explanation concerning the searches conducted in response to the narrowed requests.

11. On September 21, 2026, Plaintiff sent a follow-up communication requesting a status update and asking whether additional responsive records would be produced.

12. As of the filing of this Motion, the disputes remain unresolved.

13. Defendant's September 3, 2026, acknowledgment that it would review the narrowed requests, determine what additional responsive documents existed, and gather such documents demonstrates that additional review and searching were anticipated following the Court's hearing. Plaintiff relied upon that representation in allowing additional time before seeking further Court intervention.

14. Defendant's counsel represented that he would determine what additional responsive documents existed and gather such documents. As of the filing of this Motion, Defendant has neither supplemented its production nor advised Plaintiff that no additional responsive records exist.

15. Plaintiff has acted in good faith throughout these proceedings by substantially narrowing the requests, allowing additional time for review and production, and attempting to resolve the remaining disputes without further Court intervention.

16. The narrowed requests in this case concern records relating to Plaintiff's residence and property located at [redacted] Elkins, Arkansas, including but not limited to surveys, plats, lot-designation records, records identifying the property as Lot [redacted] Lot [redacted] or any other lot designation, grading plans, grading modifications, drainage plans, drainage modifications, engineering records, inspections, certificates of occupancy, development approvals, site-development records, and related communications.

17. Plaintiff acknowledges that the Court cannot compel production of records that do not exist. However, where Defendant contends that responsive records do not exist, Plaintiff respectfully requests sworn affidavits establishing who searched, what was searched, how searches were conducted, what locations were searched, what persons and entities were contacted, and the factual basis for concluding the requested records do not exist.

18. A true and correct copy of Plaintiff's September 3, 2026, email transmitting the narrowed requests is attached hereto as Exhibit 1.

19. A true and correct copy of Defendant's September 3, 2026, response acknowledging the narrowed requests and stating that additional responsive documents would be reviewed and gathered is attached hereto as Exhibit 2.

20. A true and correct copy of Plaintiff's September 21, 2026, follow-up email requesting a status update regarding the narrowed requests is attached hereto as Exhibit 3.

21. A true and correct copy of Plaintiff's narrowed request for Case No. 72CV-26-2120 is attached hereto as Exhibit 4.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Order Defendant to provide a complete response to the narrowed requests;

B. Order Defendant to produce all additional responsive records identified through its review and search efforts;

C. Order Defendant to identify all responsive records that Defendant contends do not exist or cannot be located;

D. Order Defendant to identify any responsive records withheld and the basis for withholding them;

E. Order Defendant to provide separate sworn affidavits, executed under oath, from each individual who conducted, participated in, supervised, directed, reviewed, coordinated, requested, or provided records in connection with any search for responsive records.

Each affidavit shall identify with specificity:

i. The affiant's name, title, position, and role in the search process;

ii. The dates on which the affiant conducted, supervised, coordinated, or participated in any search;

iii. Every location searched by the affiant, including but not limited to:

a. Physical files;

b. Department records;

c. Electronic records;

d. Shared drives;

e. Network storage locations;

f. Cloud-based storage locations;

g. Archived records;

h. Email accounts;

i. Text messages;

j. Messaging applications;

k. Personal cellular telephones used for public business;

l. Personal email accounts used for public business;

m. Personal computers, laptops, tablets, and electronic devices used for public business;

n. Any other location, account, repository, or device reasonably likely to contain responsive records;

iv. The search methods utilized;

v. Any search terms utilized;

vi. The responsive records located by the affiant;

vii. The responsive records produced by the affiant or provided to Defendant for production;

viii. Any responsive records identified but not produced and the reason they were not produced;

ix. Any categories of requested records that were not located;

x. The factual basis for concluding that any responsive records do not exist or could not be located;

xi. The identity of every person, department, official, employee, contractor, consultant, engineer, engineering firm, developer representative, attorney, regulatory agency, governmental entity, or other person or entity known or reasonably believed to possess responsive records, together with a description of the categories of records believed to be in that person's or entity's possession;

xii. Whether Defendant requested, obtained, reviewed, or attempted to obtain such responsive records from those persons or entities;

xiii. If Defendant did not request, obtain, review, or attempt to obtain such responsive records, the factual basis for that decision;

xiv. Whether any responsive records were created, received, maintained, reviewed, transmitted, transferred, deleted, destroyed, lost, discarded, archived, or otherwise became unavailable;

xv. Whether additional searches remain to be conducted; and

xvi. Whether, to the best of the affiant's knowledge, the search described in the affidavit was complete and conducted in good faith.

F. Order Defendant to identify every employee, official, contractor, consultant, engineer, engineering firm, developer representative, attorney, agent, department, regulatory agency, governmental entity, or other person or entity that was contacted, consulted, requested to search for records, requested to provide records, or relied upon in responding to the narrowed requests.

G. Order Defendant to identify every employee, official, contractor, consultant, engineer, engineering firm, developer representative, attorney, agent, department, regulatory agency, governmental entity, or other person or entity known or reasonably believed to possess responsive records that was not contacted, together with the factual basis for that decision.

H. Order Defendant to identify:

i. The records believed to be in the possession of such persons or entities;

ii. Whether Defendant requested such records;

iii. Whether such records were obtained;

iv. Whether such records were reviewed;

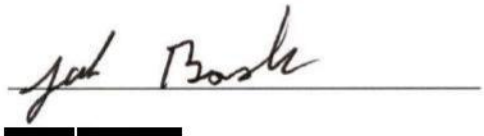
v. Whether such records were produced to Plaintiff; and

vi. If not produced, the reason for non-production.

I. Order Defendant to state whether it contends that its search for responsive records is complete and, if so, identify the factual basis for that contention.

J. Award Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,



[redacted]

Plaintiff, Pro Se

[redacted]

Elkins, AR 72727

[redacted]

[redacted]

CERTIFICATE OF SERVICE

I, [redacted] hereby certify that on the 23rd day of September 2026, a true and correct copy of the foregoing Motion to Compel Response, Production, Identification of Search Efforts, and Sworn Search Affidavits was filed with the Clerk of the Court, and a copy of this pleading has been sent to:

Thomas N. Kieklak

Harrington | Miller

[redacted]

via electronic mail.

[redacted]

EXHIBIT 1

September 3, 2026

Email Transmitting Narrowed Requests

Gmail JB [redacted]

Narrowed Records Requests and Follow-Up Hearing Coordination (72CV-26-2120, 72CV-26-3999, and 72CV-26-4000)

[redacted] Thu, Sep 3, 2026 at 9:07 AM
To: Thomas Kieklak [redacted] Delia Foster <DeliaFoster@washingtoncountyar.gov>

Mr. Kieklak and Ms. Foster,

Pursuant to the Court's discussion at the hearing, I reviewed the records previously produced, the issues discussed during the hearing, and the requests at issue in Cases 72CV-26-2120, 72CV-26-3999, and 72CV-26-4000.

After doing so, I made a good-faith effort to substantially narrow and clarify the records sought in each case. Attached are the narrowed descriptions for each case.

These narrowed descriptions are intended to reduce the scope of the disputes and focus on the records most directly relevant to the issues raised in each action. They are not intended to expand the underlying requests.

For ease of review and production, each narrowed request is provided separately by case number. I would appreciate any response, supplementation, or production likewise being identified by case number.

I would also appreciate the City's review of the narrowed categories and production of any additional responsive records identified as a result of the narrowed scope.

To allow a reasonable opportunity for review, search, and production, I intend to allow approximately three weeks from today's date before seeking further court involvement if the matters remain unresolved.

Ms. Foster, consistent with the Court's suggestion at the hearing, I would appreciate assistance in coordinating a follow-up hearing approximately three weeks from now in the event the parties are unable to resolve the remaining issues after review of the narrowed requests.

Please let us know what dates may be available on the Court's calendar.

Please confirm receipt of this email and the attached narrowed requests.

Thank you for your time and attention to these matters.

[redacted]
Plaintiff

3 attachments

2120 Narrowed Scope.docx
23K

3999 Narrowed Scope.docx
20K

4000 Narrowed Scope.docx
21K

EXHIBIT 2

September 3, 2026

Email from Thomas N. Kieklak

Acknowledging Narrowed Requests and Additional Review

Gmail JB [redacted]

Narrowed Records Requests and Follow-Up Hearing Coordination (72CV-26-2120, 72CV-26-3999, and 72CV-26-4000)

Thomas Kieklak [redacted] Thu, Sep 3, 2026 at 5:51 PM
To: [redacted] Delia Foster <DeliaFoster@washingtoncountyar.gov>
Cc: Emily Hill [redacted]

[redacted]

Thank you for your effort in narrowing the requests. I will review and begin working on determining what additional, responsive documents there are and gathering them. I will contact you if I have questions about the new requests. Talk to you soon, Tom

Thomas N. Kieklak, Attorney at Law
Harrington|Miller
T: (479) [redacted]
F: (479) [redacted]
[redacted]
www.arkansaslaw.com

This communication from Harrington, Miller, Kieklak, Eichmann & Brown, P.A., including attachments, if any, is intended as a confidential and privileged communication. If received in error, you should not copy, save or reproduce in any manner, but delete immediately and notify the sender. Thank you.

From: JB [redacted]
Date: Thursday, September 3, 2026 at 9:09 AM
To: Thomas Kieklak [redacted] Delia Foster <DeliaFoster@washingtoncountyar.gov>
Subject: Narrowed Records Requests and Follow-Up Hearing Coordination (72CV-26-2120, 72CV-26-3999, and 72CV-26-4000)

CAUTION: External Sender]

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EXHIBIT 3

September 21, 2026

Follow-Up Email Requesting Status Update

Gmail JB[redacted]

Narrowed Records Requests and Follow-Up Hearing Coordination (72CV-26-2120, 72CV-26-3999, and 72CV-26-4000)

[redacted] Mon, Sep 21, 2026 at 7:52 AM
To: Delia Foster <DeliaFoster@washingtoncountyar.gov>
Cc: Thomas Kieklak [redacted]

Mr. Kieklak,

I am following up regarding the narrowed records requests I provided on September 3, 2026, in Cases 72CV-26-2120, 72CV-26-3999, and 72CV-26-4000.

As you know, these matters arise from FOIA requests originally submitted in April 2026. Following the Court's discussion at the prior hearing, I substantially narrowed the requests to facilitate review, search, and production and advised that I would allow approximately three weeks before seeking further court involvement.

Three weeks have now passed, and I have not received any supplementation, production, objections, or status update regarding the narrowed requests.

Please advise whether the City has completed its review and whether additional responsive records will be produced. If production is forthcoming, I would appreciate an estimated timeline.

With the October 28 hearing approaching, I would like to determine whether any of the remaining issues can be resolved before returning to court.

Thank you for your attention to this matter.

[redacted]

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EXHIBIT 4

Case No. 72CV-26-2120

Plaintiff's Narrowed Request

PLAINTIFF'S NOTICE OF NARROWED SCOPE OF REQUESTED RECORDS
CASE NO. 72CV-26-2120

1. Plaintiff respectfully narrows and clarifies the records sought in this matter.

2. Plaintiff is not expanding the scope of the request. Plaintiff narrows the request to records directly relating to:

a. [redacted] Ln;

b. Lot [redacted]

c. Lot [redacted]

d. Grading;

e. Drainage;

f. Engineering review;

g. Inspections;

h. Issuance of the Certificate of Occupancy; and

i. Public business communications concerning those subjects.

3. Plaintiff seeks records created, received, reviewed, maintained, transmitted, communicated with, obtained from, or relied upon by the City concerning the foregoing subjects.

PRIORITY 1 – GRADING, DRAINAGE, INSPECTION, CERTIFICATION, APPROVAL, AND COMPLAINT RECORDS

4. Plaintiff requests records sufficient to identify the grading and drainage conditions reviewed, approved, inspected, certified, communicated about, or relied upon by the City concerning [redacted] Ln, Lot [redacted] and Lot [redacted] including:

a. As-built grading plans;

b. As-built drainage plans;

c. Record drawings reflecting final constructed conditions;

d. Documents identifying modifications, revisions, or changes between approved plans and final constructed conditions;

e. Topographic surveys;

f. Construction surveys;

g. Final surveys;

h. Elevation certifications;

i. Spot-elevation records;

j. Grade-verification records;

k. Engineer certifications;

l. Engineer approval letters;

m. Engineer signoffs;

n. Engineer acceptance records;

o. Final inspection reports;

p. Inspection checklists;

q. Inspection signoffs;

r. Compliance-verification records;

s. Records relied upon in issuing the Certificate of Occupancy for [redacted] Ln;

t. Drainage inspection records;

u. Grading inspection records;

v. Corrective-action records;

w. Records identifying grading deficiencies, drainage deficiencies, corrective measures, noncompliance findings, or unresolved concerns affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

x. Records concerning grading corrections, drainage corrections, regrading, earthwork, fill placement, repairs, or other remedial work affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

y. Records identifying whether grading or drainage issues were identified before or after issuance of the Certificate of Occupancy;

z. Records identifying whether corrective measures were completed, reviewed, inspected, approved, certified, or verified;

aa. Records concerning grading modifications, drainage modifications, regrading, earthwork, fill placement, repairs, or other changes affecting [redacted] Ln, Lot [redacted] or Lot [redacted] before or after issuance of the Certificate of Occupancy;

ab. Records concerning the placement, importation, export, removal, stockpiling, compaction, or use of fill material affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

ac. Records identifying the source, location, quantity, elevation, purpose, approval, review, inspection, or placement of fill material affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

ad. Records concerning any requests for approval of, review of, inspection of, or corrective actions relating to fill material affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

ae. Records identifying whether fill placement altered grading, drainage patterns, runoff characteristics, elevations, or conditions affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

af. Records concerning any review, recommendation, comment, approval, objection, certification, sign-off, or refusal to sign off by Garver relating to grading, drainage, fill placement, deficiencies, corrective actions, or conditions affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

ag. Records identifying the City officials, engineers, inspectors, consultants, contractors, developers, or other individuals who reviewed, approved, certified, inspected, accepted, or relied upon the foregoing records;

ah. Records of complaints, concerns, reports, requests for assistance, or communications received by the City concerning grading, drainage, runoff, erosion, fill, site conditions, or other conditions affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

ai. Records reflecting review, investigation, evaluation, referral, disposition, response, follow-up, corrective action, or resolution of such complaints, concerns, reports, or communications;

aj. Records reflecting communications from, to, or concerning the property owner, homeowner, resident, or occupant of [redacted] relating to grading, drainage, runoff, erosion, fill, inspections, engineering review, corrective actions, or site conditions affecting the property;

ak. Punch lists, deficiency lists, incomplete-work lists, corrective-work lists, or records identifying conditions required to be corrected, completed, repaired, regraded, inspected, certified, approved, or otherwise resolved concerning grading, drainage, runoff, erosion, fill, site conditions, or related improvements affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

al. Records concerning excavation, grading, regrading, cut-and-fill activities, removal of soil, removal of fill, importation of soil, importation of fill, redistribution of soil, redistribution of fill, earthwork, changes in elevation, or modification of grade affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

am. Records identifying who requested, reviewed, approved, performed, inspected, certified, accepted, or relied upon any excavation, cut-and-fill activity, soil removal, fill removal, importation of fill, grading modification, regrading, or elevation change affecting [redacted] Ln, Lot [redacted] or Lot [redacted] and

an. Records identifying whether excavation, cut-and-fill activities, soil removal, fill placement, grading modifications, regrading, or elevation changes altered drainage patterns, runoff characteristics, site elevations, drainage flow, erosion conditions, or grading conditions affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

PRIORITY 2 – LOT [redacted] / LOT [redacted] IDENTIFICATION AND COMMUNICATION RECORDS

5. Plaintiff requests complete email chains, email attachments, correspondence, memoranda, notes, internal communications, and external communications concerning:

a. [redacted] Ln;

b. Lot [redacted]

c. Lot [redacted]

d. Grading;

e. Drainage;

f. Engineering review;

g. Inspections;

h. Issuance of the Certificate of Occupancy;

i. Grading deficiencies;

j. Drainage deficiencies;

k. Corrective actions;

l. Regrading;

m. Fill placement;

n. Requests for corrective work;

o. Grading modifications;

p. Drainage modifications;

q. Post-Certificate-of-Occupancy grading or drainage work;

r. Discussions concerning whether grading or drainage conditions complied with approved plans;

s. Complaints concerning grading, drainage, runoff, erosion, fill, or site conditions;

t. Reports or concerns submitted to the City regarding grading, drainage, runoff, erosion, fill, or site conditions;

u. Responses to such complaints, reports, or concerns;

v. Discussions regarding review, investigation, evaluation, corrective actions, or resolution of such complaints, reports, or concerns;

w. Excavation activities;

x. Cut-and-fill activities;

y. Soil removal;

z. Fill removal;

aa. Changes in elevation; and

ab. Discussions concerning grading changes, earthwork, excavation, cut-and-fill activities, soil removal, fill placement, or altered drainage conditions.

6. Plaintiff further requests records sufficient to identify:

a. Whether records associated with [redacted] were maintained, referenced, identified, searched, reviewed, approved, inspected, certified, accepted, transmitted, communicated, or filed under Lot [redacted] Lot [redacted] or both designations;

b. Whether Lot [redacted] and Lot [redacted] were used to identify the same physical location, property, parcel, lot, residence, improvement, address, or development tract at different times;

c. Whether any renumbering, redesignation, replatting, correction, amendment, revision, substitution, survey revision, engineering revision, plat revision, clerical correction, or other change resulted in the use of Lot [redacted] Lot [redacted] or both designations in connection with [redacted] Ln;

d. What lot designation was used during permitting;

e. What lot designation was used during engineering review;

f. What lot designation was used during inspections;

g. What lot designation was used in connection with issuance of the Certificate of Occupancy;

h. What lot designation was used in connection with grading review, drainage review, corrective actions, complaint review, certifications, approvals, or acceptance activities;

i. Whether records relating to [redacted] were maintained under Lot [redacted] Lot [redacted] or both designations; and

j. Whether responsive records concerning [redacted] may exist under either designation.

7. The communications requested in Paragraph 5 include communications involving:

a. City personnel;

b. Garver;

c. Crafton Tull;

d. Rausch Coleman Homes;

e. Lennar;

f. NWA LD, LLC;

g. Engineers;

h. Inspectors;

i. Consultants; and

j. Contractors.

PRIORITY 3 – RESPONSIVE PUBLIC-BUSINESS RECORDS MAINTAINED OUTSIDE CITY SYSTEMS

8. Plaintiff requests responsive public-business communications concerning the subjects identified above that were maintained within non-City accounts used for public business.

9. This request includes responsive public-business communications maintained within JD DeMott's Ymail account to the extent such communications concern:

a. [redacted] Ln;

b. Lot [redacted]

c. Lot [redacted]

d. Grading;

e. Drainage;

f. Engineering review;

g. Inspections;

h. Corrective actions;

i. Garver review; or

j. Issuance of the Certificate of Occupancy.

10. This request further includes responsive public-business communications maintained outside City systems involving:

a. Garver;

b. Crafton Tull;

c. Rausch Coleman Homes;

d. Lennar;

e. NWA LD, LLC;

f. Engineers;

g. Inspectors;

h. Consultants;

i. Contractors; and

j. City personnel,

to the extent such communications concern the subjects identified herein.

11. Plaintiff includes both Lot [redacted] and Lot [redacted] because records previously produced referenced both designations in connection with [redacted] Plaintiff seeks to ensure responsive

records are not omitted due to differing lot identifiers and seeks records sufficient to determine whether both designations were used in connection with the same physical location, parcel, residence, improvement, property, or address at different times.

12. Plaintiff includes responsive public-business communications maintained outside City systems because records previously produced demonstrated the use of a non-City account in connection with City business, and Plaintiff seeks to ensure responsive records are not omitted solely because they were maintained outside City systems.

PLAINTIFF'S POSITION

13. Plaintiff submits that this Notice narrows and clarifies the existing request and does not expand its scope.

14. Plaintiff seeks records directly relevant to determining:

a. What grading and drainage conditions were approved;

b. What grading and drainage conditions were ultimately constructed;

c. Whether grading, drainage, elevation, fill, excavation, or cut-and-fill conditions changed before or after issuance of the Certificate of Occupancy;

d. What inspections occurred;

e. What deficiencies, corrective measures, unresolved concerns, punch-list items, or incomplete-work items were identified;

f. What engineering reviews occurred;

g. What records were relied upon in issuing the Certificate of Occupancy for [redacted] Ln;

h. Whether records relating to the property were maintained under Lot [redacted] Lot [redacted] or both designations;

i. What communications occurred concerning [redacted] Ln, Lot [redacted] Lot [redacted] grading, drainage, inspections, engineering review, corrective actions, fill placement, excavation, cut-and-fill activities, or issuance of the Certificate of Occupancy;

j. Whether responsive public-business communications concerning those subjects were maintained outside City systems;

k. What complaints, concerns, reports, or communications were received concerning grading, drainage, runoff, erosion, fill, or site conditions affecting [redacted] Ln, Lot [redacted] or Lot [redacted]

l. What actions, reviews, evaluations, corrective measures, or responses resulted from those complaints, concerns, reports, or communications; and

m. What deficiencies, punch-list items, incomplete work items, corrective measures, or conditions requiring correction were identified concerning [redacted] Ln, Lot [redacted] or Lot [redacted] and what actions were taken in response.