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72CV-26-3999
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IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

[redacted] PLAINTIFF

v. CASE NO. 72CV-26-3999

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 stormwater inspections, stormwater compliance records, SWPPP records, BMP records, MS4 records, compliance records, enforcement records, Garver records, engineering records, public business communications, and related records concerning stormwater compliance, enforcement, review, and oversight activities.

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-26-3999 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, including but not limited to Garver, Crafton Tull, The Calara Group, Rausch Coleman Homes, Lennar, NWA LD, LLC, and any other engineer, engineering firm, contractor, consultant, developer, developer representative, or entity involved in stormwater compliance, stormwater inspections, drainage, remediation, enforcement, development review, approvals, certifications, or related matters, 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, including but not limited to Garver, Crafton Tull, The Calara Group, Rausch Coleman Homes, Lennar, NWA LD, LLC, and any other entity involved in stormwater compliance, stormwater inspections, drainage, remediation, enforcement, development review, approvals, certifications, or related matters.

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, including but not limited to Garver, Crafton

Tull, The Calara Group, Rausch Coleman Homes, Lennar, NWA LD, LLC, 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 [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 [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:** [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 [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]

[Quoted text hidden]

**EXHIBIT 4**

Case No. 72CV-26-3999

Plaintiff's Narrowed Request

**PLAINTIFF'S NOTICE OF NARROWED SCOPE OF REQUESTED RECORDS**
**CASE NO. 72CV-26-3999**

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 concerning inspections, monitoring activities, compliance review, enforcement activities, corrective actions, MS4 oversight, and communications associated with the construction sites identified in the original June 24, 2026, request.

3. Plaintiff seeks records created, received, maintained, reviewed, communicated with, relied upon, or used by the City concerning those subjects.

**PRIORITY 1 – INSPECTION, MONITORING, COMPLIANCE, AND OVERSIGHT RECORDS**

4. Plaintiff requests:

a. Construction stormwater inspection records;

b. SWPPP inspection records;

c. BMP inspection records;

d. MS4 inspection records;

e. Site visit records;

f. Monitoring records;

g. Field notes;

h. Inspection reports;

i. Inspection logs;

j. Follow-up inspection records;

k. Corrective-action records;

l. Compliance review records;

m. Compliance determinations;

n. Warning notices;

o. Compliance directives;

p. Enforcement records;

q. Decisions to enforce;

r. Decisions to defer enforcement;

s. Decisions to decline enforcement;

t. Construction runoff review records;

u. Records documenting deficiencies, noncompliance conditions, violations, corrective measures, or follow-up activities;

v. Records identifying personnel responsible for inspections, monitoring activities, compliance determinations, enforcement decisions, corrective actions, or oversight activities;

w. Photographs;

x. Videos;

y. Inspection photographs; and

z. Records identifying the date, location, subject matter, or purpose of photographs or videos associated with inspections, monitoring activities, site visits, deficiencies, violations, corrective actions, stormwater conditions, or compliance activities.

**PRIORITY 2 – GARVER RECORDS**

5. Plaintiff requests records concerning Garver's review, analysis, recommendations, communications, reports, memoranda, comments, findings, inspections, evaluations, oversight activities, compliance reviews, stormwater reviews, corrective-action reviews, or other work relating to:

a. Construction stormwater management;

b. Stormwater BMPs;

c. Erosion and sediment control;

d. SWPPP compliance;

e. BMP compliance;

f. MS4-related activities;

g. Monitoring activities;

h. Inspections;

i. Construction runoff concerns;

j. Corrective actions; and

k. Compliance issues associated with the construction sites identified in the original request.

**PRIORITY 3 – COMMUNICATION RECORDS**

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

a. Construction stormwater inspections;

b. SWPPP inspections;

c. BMP inspections;

d. MS4 inspections;

e. Site visits;

f. Monitoring activities;

g. Compliance reviews;

h. Compliance determinations;

i. Enforcement decisions;

j. Corrective actions;

k. Construction runoff concerns;

l. Stormwater BMPs;

m. Deficiencies or violations;

n. Garver reviews or recommendations;

o. Follow-up activities relating to identified deficiencies or compliance concerns;

p. Email attachments;

q. Records referenced within email attachments; and

r. Communications referencing inspection records, photographs, videos, SWPPP records, BMP records, corrective-action records, reports, memoranda, field observations, or other records concerning the identified construction sites.

7. This includes communications involving:

a. City personnel;

b. Garver;

c. Engineers;

d. Inspectors;

e. Consultants;

f. Contractors;

g. Developers; and

h. Builders associated with the sites identified in the original request.

**PRIORITY 4 – PUBLIC-BUSINESS RECORDS MAINTAINED WITHIN CITY AND NON-CITY SYSTEMS**

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

9. This request includes responsive communications maintained within:

a. JD DeMott's City-issued email account;

b. JD DeMott's Ymail account;

c. Other City-issued accounts used for public business; and

d. Non-City accounts used for public business,

to the extent such communications concern:

i. Construction stormwater inspections;

ii. SWPPP inspections;

iii. BMP inspections;

iv. MS4 inspections;

v. Site visits;

vi. Monitoring activities;

vii. Compliance reviews;

viii. Compliance determinations;

ix. Enforcement decisions;

x. Corrective actions;

xi. Construction runoff concerns;

xii. Garver reviews or recommendations; or

xiii. Stormwater-management activities associated with the construction sites identified in the original request.

10. This request further includes responsive communications with or concerning:

a. Garver;

b. Engineers;

c. SWPPP inspectors;

d. Third-party inspectors;

e. Builder-paid inspectors;

f. Contractors;

g. Consultants;

h. Developers;

i. Rausch Coleman Homes;

j. Lennar;

k. NWA LD, LLC; and

l. Builders associated with the sites identified in the original request.
to the extent such communications concern inspections, monitoring activities, compliance determinations, enforcement activities, corrective actions, or MS4-related oversight.

11. Plaintiff includes communications maintained outside City systems because the original request expressly included records maintained on personal devices and personal accounts when used for official City business, and Plaintiff seeks to ensure responsive public records are not omitted solely because they were maintained outside City systems.

**PLAINTIFF'S POSITION**

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

13. Plaintiff seeks only records directly relevant to determining:

a. What inspections occurred;

b. What monitoring activities occurred;

c. What deficiencies, violations, or compliance concerns were identified;

d. What corrective actions were required or undertaken;

e. What compliance determinations were made;

f. What enforcement decisions were made;

g. What MS4 oversight activities occurred;

h. What Garver reviewed, evaluated, recommended, or communicated;

i. What records document those activities; and

j. What communications occurred concerning those subjects.