ELECTRONICALLY FILED
Washington County Circuit Court
Kyle Sylvester, Circuit Clerk
2026-Sep-23 12:39:16
72CV-26-4000
C04D02 : 27 Pages

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

[redacted] PLAINTIFF

v. CASE NO. 72CV-26-4000

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 the 2016 development moratorium, Resolution 2018-06, detention pond remediation, engineering certifications, development approvals, transfer of responsibilities to the homeowner's association, and related communications and records.

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-26-4000 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; and

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 NWA LD, LLC, Garver, Crafton Tull, The Calara Group, Rausch Coleman Homes, Lennar, , and any other person or entity involved in the development moratorium, detention pond remediation, Resolution 2018-06,

engineering certifications, development approvals, drainage improvements, stormwater compliance, transfer of responsibilities to the homeowners association, 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, received, or attempted to obtain responsive records from such persons or entities;

xiii. If Defendant did not request, obtain, review, receive, or attempt to obtain such 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:

i. The records believed to be in the possession of the persons or entities identified in subsection E(xi);

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.

G. 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.

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

Respectfully submitted,

Jack L. Bash

[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]

[Quoted text hidden]

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)

JB [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-26-4000

Plaintiff's Narrowed Request

PLAINTIFF'S NOTICE OF NARROWED SCOPE OF REQUESTED RECORDS

CASE NO. 72CV-26-4000

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. The November 17, 2016, Stokenbury Farms moratorium;

b. Engineer-certification requirements associated with the moratorium;

c. Resolution No. 2018-06;

d. Detention pond remediation activities;

e. The City's determination that detention pond concerns had been adequately addressed;

f. The City's determination that development could resume;

g. Ownership of detention pond properties and related stormwater infrastructure; and

h. Transfer of maintenance, inspection, repair, operational, funding, drainage, or stormwater-management responsibilities concerning the detention ponds.

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 – MORATORIUM AND ENGINEER CERTIFICATION RECORDS

4. Plaintiff requests:

a. Records identifying the conditions required to satisfy or lift the November 17, 2016, moratorium;

b. Records identifying when those conditions were determined to be satisfied;

c. Records identifying who determined that those conditions had been satisfied;

d. Engineer certifications;

e. Engineer signoffs;

f. Engineer reports;

g. Engineer recommendations;

h. Engineer acceptance documents;

i. Inspection reports;

j. Inspection notes;

k. Field observations;

l. Remediation certifications;

m. Completion certifications;

n. Records identifying who submitted, reviewed, approved, accepted, acknowledged, or relied upon engineer certifications or signoffs; and

o. Records relied upon by the City in determining that engineer-certification requirements associated with the moratorium had been satisfied.

PRIORITY 2 – RESOLUTION NO. 2018-06 AND REMEDIATION RECORDS

5. Plaintiff requests:

a. Records concerning remediation required by Resolution No. 2018-06;

b. Inspection records;

c. Engineer certifications;

d. Engineer signoffs;

e. Completion certifications;

f. Acceptance documents;

g. Records showing whether remediation work was completed;

h. Records showing when remediation work was completed;

i. Records identifying deficiencies, corrective measures, repairs, or unresolved concerns;

j. Records showing City verification of completed remediation work;

k. Records identifying who determined remediation obligations had been satisfied;

l. Records identifying who accepted completed remediation work on behalf of the City;

m. Records relied upon by the City in determining remediation obligations had been satisfied; and

n. Records showing whether the remediation actions identified in the April 2018 Agreement and the September 20, 2017, Stokenbury Farms Pond Analysis were completed, inspected, verified, certified, accepted, or otherwise determined to be satisfactory.

PRIORITY 3 – DEVELOPMENT RESUMPTION RECORDS

6. Plaintiff requests:

a. Records identifying who determined detention pond concerns had been adequately addressed;

b. Records identifying who approved, authorized, reviewed, recommended, acknowledged, or relied upon continued development following the moratorium;

c. Records identifying what reports, inspections, analyses, certifications, recommendations, communications, or other information were relied upon in making that determination;

d. Records identifying the City officials, engineers, consultants, contractors, inspectors, developers, or other individuals who participated in, reviewed, approved, recommended, or relied upon those determinations;

e. Records identifying the basis upon which development was permitted to continue following the moratorium; and

f. Records concerning communications relating to whether moratorium requirements, remediation requirements, or engineer-certification requirements had been satisfied.

PRIORITY 4 – OWNERSHIP, MAINTENANCE, AND HOA RESPONSIBILITY RECORDS

7. Plaintiff requests:

a. Records identifying the current owner of the detention pond properties;

b. Records transferring ownership of detention pond properties;

c. Records identifying ownership of associated drainage facilities, drainage easements, maintenance easements, detention infrastructure, or related stormwater infrastructure;

d. Records transferring maintenance responsibilities;

e. Maintenance agreements;

f. HOA declarations;

g. HOA bylaws;

h. Protective covenants or governing documents relating to detention pond responsibilities;

i. Records identifying when ownership or maintenance responsibilities were transferred;

j. Records identifying who approved, reviewed, accepted, authorized, acknowledged, documented, or relied upon any such transfer;

k. Records identifying maintenance, inspection, repair, operational, funding, drainage, water-quality, or stormwater-management responsibilities associated with the detention ponds;

l. Records identifying whether responsibility for future maintenance, repairs, remediation, replacement, operation, or stormwater management was transferred to the HOA; and

m. Records identifying whether any developer, developer-controlled entity, affiliated entity, or successor retained responsibilities relating to the detention ponds following transfer of ownership or maintenance obligations.

PRIORITY 5 – COMMUNICATIONS AND DECISION-MAKING RECORDS

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

a. The November 17, 2016, moratorium;

b. Engineer-certification requirements;

c. Resolution No. 2018-06;

d. Detention pond remediation;

e. Inspections;

f. Remediation completion;

g. Engineer certifications or signoffs;

h. Determinations that remediation obligations had been satisfied;

i. Determinations that detention pond concerns had been adequately addressed;

j. Determinations that development could resume;

k. Ownership of detention pond properties;

l. Transfer of maintenance responsibilities;

m. HOA responsibilities relating to detention ponds or related stormwater infrastructure;

n. Email attachments;

o. Records transmitted as attachments;

p. Engineering reports transmitted by email;

q. Certifications transmitted by email; and

r. Documents referenced in communications concerning remediation, certification, inspection, development resumption, ownership, maintenance, or HOA responsibilities.

9. The communications requested in Paragraph 8 include communications involving:

a. City personnel;

b. Rausch Coleman Homes;

c. NWA LD, LLC;

d. Lennar;

e. Garver;

f. Crafton Tull;

g. Engineers;

h. Consultants;

i. Inspectors;

j. Contractors; and

k. Other entities involved in remediation, certification, inspection, engineering review, ownership, maintenance, stormwater management, detention pond responsibilities, or development decisions concerning the detention ponds.

PRIORITY 6 – RESPONSIVE PUBLIC-BUSINESS RECORDS MAINTAINED OUTSIDE CITY SYSTEMS

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

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

a. The moratorium;

b. Engineer certifications;

c. Engineer signoffs;

d. Resolution No. 2018-06;

e. Detention pond remediation;

f. Development resumption;

g. HOA responsibilities;

h. Ownership of detention pond properties; or

i. Communications with Rausch Coleman Homes, NWA LD, LLC, Lennar, Garver, Crafton Tull, engineers, consultants, contractors, or inspectors relating to those subjects.

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

a. Rausch Coleman Homes;

b. NWA LD, LLC;

c. Engineers;

d. Consultants;

e. Inspectors;

f. Contractors; and

g. City personnel,

to the extent such communications concern the subjects identified herein.

13. Plaintiff includes responsive public-business communications maintained outside City systems because Defendant previously represented that responsive records were being sought from City personnel, engineers, and third parties and that responsive documents were expected to exist. Plaintiff seeks to ensure responsive public records are not omitted solely because they were maintained outside City systems.

PLAINTIFF'S POSITION

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

15. Plaintiff seeks records directly relevant to determining:

a. What conditions were required to satisfy the moratorium;

b. What records support the City's determination that those conditions were satisfied;

c. What engineer certifications, signoffs, inspections, remediation certifications, completion certifications, acceptance documents, or similar records were relied upon;

d. What remediation occurred and whether it was completed;

e. Who determined remediation had been completed;

f. Who determined detention pond concerns had been adequately addressed;

g. Who determined development could resume;

h. What records support those determinations;

i. Who owns the detention pond properties and related stormwater infrastructure;

j. What maintenance, inspection, repair, operational, funding, drainage, or stormwater-management responsibilities were transferred;

k. What records document those transfers;

l. What communications occurred concerning those subjects; and

m. Whether the remediation actions identified in the April 2018 Agreement and supporting engineering analysis were completed, inspected, certified, accepted, or otherwise determined to satisfy the conditions associated with lifting the moratorium.