



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-039

March 7, 2022

In re: Chad Heath/Hardin County Fiscal Court

Summary: The Hardin County Fiscal Court (the “Fiscal Court”) violated the Open Records Act (“the Act”) when it failed to issue a response to a request under the Act within five business days. The Fiscal Court has made the requested documents available to the requester, thus, any remaining issues are moot under 40 KAR 1:030 § 6.

Open Records Decision

On January 22, 2022, after normal business hours, Chad Heath (“Appellant”) submitted a request by email to the Hardin County Fiscal Court for a copy of the “financial statement for each quarter of fiscal year 2021 of the Hardin County Detention Center[.]” On February 6, 2022, having received no response from the Fiscal Court, this appeal followed.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days ... after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” On appeal, the Fiscal court admits it received the request but that the request was diverted to its spam folder which was why it did not issue

a timely response.¹ Thus, the Fiscal Court's failure to issue a response within five business days violated the Act.

The Fiscal Court also claims, on appeal, that it has located the responsive records and can provide copies to the Appellant upon receiving payment of the copying fee, which is 10 cents per page.² Under 40 KAR 1:030 § 6, "[i]f the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter." This Office has found that a public agency does not violate the Act when it requires prepayment of a non-excessive copying fee, and that a copying fee of 10 cents per page is not excessive. *See, e.g., 22-ORD-002.* Accordingly, since the Fiscal Court has made the requested documents available to the Appellant, these issues are now moot pursuant to 40 KAR 1:030 § 6.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/Matthew Ray
Matthew Ray
Assistant Attorney General

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¹ It is unclear when the Fiscal Court received the request but since it was transmitted via email it is assumed it was received the same day the Appellant transmitted it.

² The Fiscal Court also notes that the records are available on its website. However, this Office has previously found that a public agency does not discharge its duty to provide responsive records when it merely directs a requester to its website. *See, e.g., 21-ORD-129.*

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Distributed to:

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