



COMMONWEALTH OF KENTUCKY
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22-ORD-058

April 7, 2022

In re: Chad Heath/LaRue County Sheriff's Office

Summary: The LaRue County Sheriff's Office (the "Sheriff's Office") violated the Open Records Act ("the Act") when it did not adopt, or post to its website, any rules or regulations containing its procedure for submitting requests under the Act.

Open Records Decision

On February 27, 2022, Chad Heath ("Appellant") emailed a request to inspect records to the Sheriff's Office, at Sheriff@laruecounty.org, for "a copy of [a] statement filing [sic] showing that [a deputy sheriff] and [the sheriff] have completed the FARA Registration Act of 1938." On March 11, 2022, having received no response from the Sheriff's Office, this appeal followed.

On March 14, 2022, the Sheriff's Office responded that the email address to which the Appellant submitted the request is its "tax collection" email address and that the Sheriff does not respond to emails sent to that email address. The Sheriff's Office claims that it was "completely unaware" of the Appellant's request, and therefore, the Sheriff's Office did not know to respond. The Sheriff's Office now invites the Appellant to resubmit his request "to the active email of rmccoy@laruecounty.org."

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.” Here, the Sheriff’s Office claims it did not receive the Appellant’s request because it does not receive requests to inspect public records at the email address to which the Appellant submitted his request. This Office has found that an agency’s duty under the Act arises only after it receives a request to inspect records. *See. e.g.*, 21-ORD-019. However, the Sheriff’s Office likely did not receive the request because it has violated the Act in another way—by failing to post its rules and regulations for submitting requests under the Act, which should include the correct email address of its official records custodian, to its website. KRS 61.876(2).

During the 2021 Regular Session of the General Assembly, the legislature enacted House Bill 312, which amended several provisions of the Act. Now, a public agency must accept a request to inspect records that is emailed to the “public agency’s official custodian of public records or his or her designee at the e-mail address designated in the public agency’s rules and regulations adopted pursuant to KRS 61.876.” KRS 61.872(2)(b)4. And under KRS 61.876, every “public agency shall adopt rules and regulations in conformity with” the Act, which shall include the procedure for submitting requests and the “title, mailing address, *and e-mail address* of the official custodian of the public agency’s records” to whom requests to inspect records shall be submitted. KRS 61.876(1)(b) (emphasis added). Moreover, both the agency’s adopted rules and regulations pertaining to public records, and the name, address, and email address of its official records custodian, must be displayed “in a prominent location accessible to the public, including on its Web site.” KRS 61.876(2).

Here, the Sheriff’s Office admits that it does not “have a specific set of policies and procedures for open records requests.”¹ Accordingly, the Sheriff’s Office violated the Act when it failed to adopt rules and regulations setting forth its procedure for submitting requests under the Act, which should include

¹ The Sheriff’s Office also states that it does provide access to the standardized form, published by this Office, for submitting requests under the Act. *See* KRS 61.876(2)(c). However, the Act requires a public agency to adopt its own rules and regulations that describe the process for submitting requests to that agency, and post such rules and regulations on its website.

the email address of its official records custodian. The Sheriff's Office also must post such rules and regulations on its website.²

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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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Distributed to:

Chad Heath
Kyle W. Williamson

² After the appeal was initiated, this Office received an email stating the Sheriff's Office was unable to "locate any records for the dates" with the limited information the Appellant provided in his request. This Office notes that the Foreign Agents Registration Act, 22 U.S.C. § 611, *et seq.*, applies only to entities in the United States that are operating on behalf of a foreign government, or foreign individuals, for political or financial purposes. There is no evidence that the Sheriff's Office is engaged in any activity on behalf of foreign actors, and there is no reason it would have the record requested by the Appellant.