



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-129

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In re: David Rymer/Boyd County Fiscal Court

Summary: The Boyd County Fiscal Court (the “Fiscal Court”) subverted the intent of Open Records Act (“the Act”), within the meaning of KRS 61.880(4), when it imposed an excessive fee for copies of records.

Open Records Decision

David Rymer (“Appellant”) submitted six Open Records Request Forms to the Fiscal Court. The forms contained eight subparts of various records that the Appellant wished to receive electronically for a noncommercial purpose. In response, the Fiscal Court granted the request but notified the Appellant that it would charge \$41.22 for the 24 pages of responsive records. The Appellant asked the Fiscal Court for an itemization to explain the large total cost.

The Fiscal Court provided the Appellant a post-it note that itemized the cost by stating that it “charge[s] \$.50 a page and [it] used an hour of [] time which was \$29.22/hr.” The Appellant then initiated this appeal and asked this Office to review the \$41.22 fee that the Fiscal Court imposed to provide 24 pages of responsive records to him.

A requester may seek this Office’s review to determine whether “the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the *imposition* of excessive fees.” KRS 61.880(4) (emphasis added). Thus, an agency’s mere attempt to impose an excessive fee can lead to a violation of KRS 61.880(4), even if the agency subsequently modifies or declines to collect the excessive fee. *See, e.g.,* 21-ORD-212; 20-ORD-087. The Act

provides that a “public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required.” KRS 61.874(3).

Under KRS 61.880(2)(c), the burden is on the public agency to sustain its actions. Historically, this Office has found that when an agency imposes a fee to provide records, it must demonstrate that the fee imposed represents the actual cost of reproducing the responsive records. *See, e.g.*, 19-ORD-197; 13-ORD-147. This Office has also found that any copying charge above ten cents per page is presumed to be excessive unless the agency can substantiate that its actual cost is greater than that amount. *See, e.g.*, 21-ORD-243; 19-ORD-062; 08-ORD-021; 01-ORD-136; 94-ORD-77.¹

Moreover, the Appellant requested that the responsive records be reproduced electronically and emailed to him. With regard to the appropriate fee for transmitting electronic records, this Office has found that a fee of ten cents per page is excessive when the agency’s actual cost to reproduce such records is less than ten cents per page. *See, e.g.*, 14-ORD-148; 14-ORD-078. Thus, if the records are stored electronically such that there is no cost to reproduce them, the agency may not charge a copying fee.

Here, the Fiscal Court’s initial response stated that it “charge[s] \$.50 a page and [it] used an hour of [] time which was \$29.22” per hour. Although the Fiscal Court has since “recalculated” the fee it imposed, the Fiscal Court has never explained why complying with the Appellant’s request allegedly cost \$0.50 per page. Nor has it explained why it attempted to impose the charge for staff costs on the Appellant.² While the Fiscal Court’s decision on appeal to recalculate and refund the excessive fee mitigates its initial violation, the Fiscal Court’s initial imposition of the fee subverted the Act under KRS 61.880(4).

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

¹ However, some agencies are authorized by statute to charge a fee greater than ten cents per page. *See, e.g.*, KRS 64.019(2) (authorizing county clerks to charge \$0.50 per page).

² In an email to this Office the Fiscal Court states it has “processed the request by [the Appellant] and will refund the amount of \$38.82.”

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:

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