



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-130

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In re: Joshua Brown/Office of the State Treasurer

Summary: An appeal alleging excessive fees, initiated prior to a request for records from a public agency, is not ripe for review by the Attorney General under KRS 61.880(2).

Open Records Decision

On April 26, 2022, Joshua Brown (“Appellant”) submitted an e-mail asking how he could “do an archival search” of unclaimed property accounts reported to the Office of the State Treasurer (“the Treasurer’s Office”).¹ In response, the Treasurer’s Office sent the Appellant its “Unclaimed Property Finder Lists Order Form,” which indicates that lists for individual years will be provided upon request “in PDF format” for a fee of ten cents per page. This appeal followed.

The Appellant argues that the unclaimed property lists offered in PDF format should be “released at no cost to the requester.” Under KRS 61.880(4), a person requesting records may appeal to the Attorney General if he believes “the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees.” The Act provides that a “public agency may prescribe a reasonable fee for making copies of nonexempt public records

¹ According to its response to this appeal, the Treasurer’s Office has received other correspondence from the Appellant that could be construed as requests for records. Those, however, are not at issue in this appeal because the Appellant did not submit them to this Office. See KRS 61.880(2)(a) (requiring “a copy of the written request and a copy of the written response denying inspection” to be submitted to the Attorney General by a “complaining party” seeking review of an open records matter). Likewise, although the record contains correspondence between the Appellant’s mother and the Treasurer’s Office, the Appellant’s mother is not the complaining party in this appeal. Moreover, although the Appellant’s mother appears to be a resident of the Commonwealth, the Appellant appears to be a resident of Florida. Only “residents of the Commonwealth,” as defined under KRS 61.870(10), have the statutory right to inspect public records. See KRS 61.872(2)(a).

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).²

In this case, however, the Appellant has not presented an appeal under KRS 61.880(2) that is ripe for decision by this Office. Under KRS 61.880(1), a person seeking to enforce the Act by appealing to the Attorney General “shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section.” That is, a person must request records from a public agency, and allow the agency an opportunity to grant or deny that request, before initiating an appeal to this Office.³ *See, e.g.*, 21-ORD-253; 17-ORD-150. Here, however, the Appellant attempts to premise his appeal upon a statement of fees contained in a request form that he has not yet submitted to the Treasurer’s Office. The Appellant cannot complain that an excessive fee has been imposed when he has not yet given the Treasurer’s Office an opportunity to impose or waive the fee. Because the Appellant has not made an actual request for records, or been assessed a fee for those records by the Treasurer’s Office, this appeal does not present a controversy that is capable of review by this Office.

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 e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

s/James M. Herrick
James M. Herrick
Assistant Attorney General

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² Although the Kentucky Court of Appeals has held that ten cents per page is a reasonable charge for paper copies, *Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985), this Office has found the same fee excessive for records maintained in electronic format when the agency did not substantiate that the fee represented the actual cost of reproduction. *See, e.g.*, 14-ORD-148; 14-ORD-078.

³ This prerequisite does not, however, apply to complaints that a public agency has violated a general duty imposed by the Act that is unrelated to any particular request for records, such as an agency’s failure to adopt or to post the rules and regulations required under KRS 61.876. *See, e.g.*, 15-ORD-198.

Distributed to:

Mr. Joshua Brown
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