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**22-ORD-142**

June 28, 2022

In re: Mark Graham/Christian County Clerk's Office

**Summary:** The Office cannot find that the Christian County Clerk's Office (the "Clerk") failed to respond to a request submitted under the Open Records Act ("the Act") within five business days when the Clerk provided proof that a timely response was issued.

***Open Records Decision***

On May 23, 2022, Mark Graham ("Appellant") submitted a request to the Clerk seeking various voting records, election administration records, communications, and meeting minutes and agendas from a meeting of the local Board of Elections.<sup>1</sup> Although he received a message from the Clerk confirming receipt of his request, the Appellant claims he received no further response from the Clerk. Therefore, he initiated this appeal on May 31, 2022.

On appeal, the Clerk claims that it did issue a timely response to the Appellant. As proof, the Clerk submits a copy of a letter dated May 25, 2022, that it claims to have sent to the Appellant containing its response and 17 pages of responsive records.<sup>2</sup>

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<sup>1</sup> Specifically, the Appellant sought "a copy of all Absentee ballot[s] [and their] envelopes from the last three elections" as well as a request to inspect all denied and approved absentee ballots and their envelopes for the same elections. He also sought "any and all communications used to determine the validity of any and all denied [or] rejected absentee ballots [and] envelopes." The Appellant also sought "a poll worker contact list" of those assigned to work the May 17, 2022 primary election, and the meeting minutes and agenda of the local Board of Elections for the day of that primary.

<sup>2</sup> The Clerk denied the Appellant's request for copies of the absentee ballots and their envelopes under KRS 117.0861(1) and KRS 118.025(1), incorporated into the Act under KRS 61.878(1)(l). The Clerk also denied the Appellant's request for communications about the denial or approval of specific

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 Clerk admits to receiving the Appellant's request on May 23, 2022, but also claims to have responded to that request on May 25, 2022. The Appellant claims that he did not receive any response from the Clerk except the May 23, 2022 email that confirmed receipt of his request.

Historically, this Office has found that it cannot resolve a factual dispute between the parties, such as whether the requester received the public agency's response when the agency provides competing proof that the response was issued. *See, e.g.*, 22-ORD-024; 21-ORD-233; 21-ORD-163. Accordingly, this Office cannot find that the Clerk's Office failed to issue a response to the Appellant's request within five business days.<sup>3</sup>

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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/Matthew Ray  
Matthew Ray  
Assistant Attorney General

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ballots because no responsive records exist. The Clerk, however, granted the Appellant's request for a list of the poll workers, and the meeting minutes and agenda from the day of the primary.

<sup>3</sup> The Appellant initiated this appeal because he claimed that the Clerk did not respond to his request. Although this Office cannot resolve the factual dispute about whether the Appellant received the Clerk's initial response, this Office notes that the Appellant did receive a copy of it on appeal on June 6, 2022. As of the date of this decision, the Appellant has not objected to the Clerk's partial denial of his request. Therefore, the Office declines to consider whether the Clerk properly relied on KRS 117.0861(1) and KRS 118.025(1), incorporated under KRS 61.878(1)(l), to deny the Appellant's request for copies of absentee ballots and their envelopes. *See, e.g.*, 21-ORD-177 (noting that the Office may decline to consider new issues on appeal, but proceeded with its analysis because both parties submitted arguments in favor of their position).

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Distributed to:

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