



COMMONWEALTH OF KENTUCKY  
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**22-ORD-250**

November 21, 2022

In re: Kimberly Holloway/Graves County Clerk

**Summary:** The Graves County Clerk (“the Clerk”) violated the Open Records Act (“the Act”) when her initial response to a request to inspect records failed to explain how an exemption applied to deny the request. However, the Clerk has clarified on appeal that no responsive record exists.

***Open Records Decision***

Kimberly Holloway (“the Appellant”) asked the Graves County Clerk to provide “a complete list of the Graves County Republican poll workers and the dates that they became poll workers or were otherwise elected to office.” In a timely response, the Clerk stated “under KRS 61.878 (1-A) [*sic*] these records are protected under [*sic*] dissemination.” This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). Here, the Clerk issued a response within five business days and denied the request under KRS 61.878(1)(a), the personal privacy exemption. However, the Clerk did not explain how KRS 61.878(1)(a) applied to the records withheld. Thus, the Clerk violated the Act when she cited an exemption to deny a request but failed to explain how the exemption applied to the records withheld. KRS 61.880(1).

After the appeal was initiated, the Clerk provided her additional correspondence with the Appellant. After the Clerk had denied the Appellant’s first request, the Appellant disputed the denial and sent a second request in which she sought “a complete list of the Graves County Republican County Committee and the

dates that they became poll were [sic] elected to office.” The Appellant further stated that she did not believe KRS 61.878(1)(a) applied to the requested list. The Clerk told the Appellant she did not understand which records the Appellant was seeking, but that the Clerk “do[es] not have access” to records of the “GOP committee.”

Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does or should exist. See *Bowling v. Lexington-Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records do or should exist, then the public agency “may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

Here, to make her *prima facie* case that a responsive list should exist, the Appellant relies on KRS 117.045, which provides for the selection and qualification of “precinct officers.”<sup>1</sup> Specifically, under KRS 117.045(2), “[t]he county executive committees of the two (2) political parties having representation on the State Board of Elections may, on or before March 15 each year, designate in writing to the county board of elections a list of not less than four (4) names for each precinct” (emphasis added). However:

If no lists are submitted by the county executive committees under [KRS 117.045(2)], the two (2) members of the county board of elections who are appointed by the State Board of Elections may submit lists; and the county board of elections shall select the sheriff and one (1) judge from one (1) list and the clerk and the other judge from the remaining list.

KRS 117.045(4)(b).<sup>2</sup>

A reasonable interpretation of the Appellant’s request for a “list” of “Republican poll workers” is that she sought a copy of the “list” that may have been submitted by the Graves County Republican Party executive committee, as described in KRS 117.045(2). But the county executive committees of the political parties are not required to submit such lists, and KRS 117.045 provides for several alternatives in the event the county executive committees do not submit lists. The Clerk confirmed that the Graves County Republican Party executive committee did not submit such

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<sup>1</sup> Under KRS 61.880(2)(c), this Office sought additional information from the parties to clarify which records the Appellant sought and which records the Clerk possessed. The Appellant confirmed that she sought the list described under KRS 117.045(2), *i.e.*, a list submitted by the Graves County Republican Party executive committee.

<sup>2</sup> County boards of election or Clerks may also select an additional and “adequate” number of “alternative” precinct officers from lists previously submitted, KRS 117.045(4)(d), or from other volunteers in the precinct, KRS 117.045(4)(f) and (6).

as a list. Accordingly, the Clerk does not possess a record responsive to the Appellant's request.<sup>3</sup>

In sum, although the Clerk initially violated the Act when she denied a request without explaining how a claimed exemption applied to the record withheld, the Clerk cannot provide a record that she does not possess, and she has explained why she does not possess the requested list.

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/ Marc Manley  
Marc Manley  
Assistant Attorney General

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Distributed to:

Kimberly Holloway  
Kimberly Gills

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<sup>3</sup> Because the Clerk does not possess a list submitted by the Graves County Republican Party nominating precinct workers, it is unnecessary to decide whether KRS 61.878(1)(a) allows the withholding of precinct worker identities. But the Office notes that full transparency in the election process is vital. The public interest in the identities of those tasked with running our elections is quite high, whereas the personal privacy interest in a person's name is low. *See, e.g.*, 03-ORD-034 (finding that KRS 61.878(1)(a) did not apply to withhold the identities of voters using a voter assistance form); OAG 82-234 ("a person's name is personal but it is the least private thing about him").