



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-261

December 7, 2022

In re: Kristin Simonson/Spencer County Clerk

Summary: The Spencer County Clerk (the “Clerk’s Office”) violated the Open Records Act (“the Act”) when it did not respond to two requests to inspect records within five business days. This Office is unable to adjudicate the factual dispute raised by the Appellant.

Open Records Decision

On October 28, 2022, Kristin Simonson (“Appellant”) submitted two requests to the Clerk’s Office for copies of “video recordings of the Spencer County Clerk’s office,” each seeking video recorded on a specific date and time. On November 8, 2022, having received no response from the Clerk, the Appellant initiated this appeal.

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.” KRS 61.880(1). Here, the Clerk’s Office does not dispute the Appellant’s claim that it failed to respond to her requests within five business days. Thus, the Clerk’s Office violated the Act when it failed to issue a timely response to the Appellant’s requests.

On appeal, the Clerk’s Office claims it has made available to the Appellant the two video recordings responsive to her requests. However, the Appellant disputes that these two recordings are the ones she requested. Specifically, she claims the video footage she received depicts a “dark, closed office with no deputies or” any other Clerk’s Office employees. She further claims that one of the videos should have

depicted an employee having a phone conversation because the Appellant spoke to an employee over the phone on one of the days and times for which she requested video. However, the video provided did not depict anyone in the Clerk's Office taking phone calls. In response, the Clerk's Office states that it "hired someone to extract the requested video" and it "did not review the material disclosed to the requestor." The Clerk's Office claims its video system is outdated and in need of repairs.

The parties dispute whether the correct records were provided to the Appellant. However, this Office is unable to resolve factual disputes between the parties. *See, e.g.*, 22-ORD-010; 19-ORD-083 (stating this Office cannot "resolve the factual dispute between the parties regarding the disparity between records which have been provided and those sought but not provided"). The factual questions not capable of resolution by this Office here include: (a) whether the video recordings the Appellant received are different from the video recordings she requested; (b) the exact time the Appellant called the Clerk's Office; and (c) whether the Clerk's Office's video system should have been able to record a deputy clerk taking the Appellant's call. Accordingly, the Office cannot determine whether the Clerk's Office violated the Act by providing records it claims were responsive to the Appellant's request.

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
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s/ Matthew Ray
Matthew Ray
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Distributed to:

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