



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-272

December 19, 2022

In re: Troy Seelye/Office of the Meade County Judge/Executive

Summary: The Office of the Meade County Judge/Executive (“the agency”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), when it charged an excessive fee for copies of records.

Open Records Decision

On November 18, 2022, Troy Seeley (“Appellant”) requested various records from the agency relating to the Meade County Detention Center. The agency provided the records but charged a copying fee of 25 cents per page. Although the Appellant objected and stated 10 cents per page was the proper rate, he paid the fee charged by the agency. This appeal followed.

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 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 action. To meet its burden here, the agency must substantiate the costs it actually incurred to make copies of the requested records. In *Friend v. Rees*, 696 S.W.2d 325 (Ky. App. 1985), the Kentucky Court of Appeals held that 10 cents per page was a reasonable fee for physical copies under the Act. *Id.* at 326. This Office has consistently found that any copying fee above 10 cents per page is excessive unless

the agency can substantiate that its actual cost to reproduce the records is greater than that amount, or that the agency has specific statutory authority to charge a higher copying fee. *See, e.g.*, 21-ORD-243; 19-ORD-062; 08-ORD-021; 01-ORD-136; 94-ORD-77. Here, despite receiving notice of this appeal, the agency has not attempted to substantiate its copying fee of 25 cents per page. Accordingly, this Office finds that the agency subverted the intent of the Act by imposing an excessive fee.¹

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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Distribution:

Mr. Troy Seelye
Hon. Leslie Stith
Jessica Brown Roberts, Esq.

¹ The Appellant asks this Office to order the agency to refund the excessive amount he paid to obtain the records. However, this Office has no authority under the Act to compel the agency to reimburse the Appellant. *See* 21-ORD-155 n.1; 21-ORD-152 n.1.