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**23-OMD-339**

December 18, 2023

In re: *The Bath County News Outlook*/City of Sharpsburg

**Summary:** The City of Sharpsburg (“the City”) violated the Open Meetings Act (“the Act”) when it failed to issue a written response to a complaint within three business days. The Office cannot resolve the factual dispute of whether the City had received written notice of a media organization’s request under KRS 61.823(4) to receive notice of special meetings.

***Open Meetings Decision***

On November 30, 2023, *The Bath County News Outlook* (“Appellant”), a local newspaper, emailed a written complaint to the Mayor, who is the presiding officer of the City Council, alleging the City had violated the Act by failing to notify the Appellant of a special council meeting held two days earlier. The Appellant is a media organization and claims to have requested notice of special meetings under KRS 61.823(4). The Appellant also stated it had sent a similar complaint to the Mayor in October 2023 regarding its failure to receive notice of a special meeting held in September, and the Mayor did not respond to that complaint.<sup>1</sup> As a remedy for the alleged violations, the Appellant requested the City explain why it does not provide notice to the Appellant of its special meetings. Having received no response to its complaint, the Appellant initiated this appeal on December 7, 2023.

On appeal, the City does not deny receiving the Appellant’s most recent complaint, although it does claim it did not receive the complaint submitted in

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<sup>1</sup> However, the Appellant has not provided a copy of its October complaint to the Mayor, and therefore, any alleged violations of the Act with respect to the September meeting or the Mayor’s alleged failure to respond to the October complaint are not properly before the Office. See KRS 61.846(2) (requiring the complainant to provide the Office a copy of the complaint within 60 days it was submitted if the agency fails to issue a response).

October. Upon receiving a complaint alleging a violation of the Act, a “public agency shall determine within three (3) [business] days . . . after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision.” KRS 61.846(1). Because the City does not claim it did not receive the Appellant’s November 30 complaint, it violated the Act by failing to respond to the Appellant’s complaint within three business days.

Under KRS 61.823(4)(a), prior to a special meeting, “[a]s soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to . . . each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting.” This notice requirement may be satisfied by email when the media organization states a preference to be notified by email. KRS 61.823(4)(b). The Appellant claims it did not receive notice of the City’s special meetings held on November 28, 2023. However, the Appellant has not provided proof that it submitted such a request in writing to the City prior to the special meeting. The Appellant’s October complaint allegedly put the City on notice of the Appellant’s request to receive notice of future special meetings, but the Appellant has not provided a copy of its October complaint and the City claims it did not receive it. In appeals under the Act, the Office cannot resolve factual disputes between the parties, such as whether an agency received a complaint. *See, e.g.*, 22-OMD-236 (“this Office cannot decide factual disputes in this forum”); 19-OMD-187.

The City also explains the Mayor and City Clerk are new to their positions and did not realize “the newspaper had to be informed of special called meetings.” The City explains the previous administration’s record keeping was disorganized and many records are missing. While the record on appeal does not contain evidence the Appellant submitted written notice to the Mayor under KRS 61.823(4) prior to November 30, 2023, the City is certainly on notice now. As such, it must send notice to the Appellant of all future special meetings at least 24 hours in advance. But the Office cannot find the City violated the Act by failing to deliver notice of the November 28 special meeting due to the factual dispute between the parties.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.846(4)(a). 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**  
Attorney General

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

#542

Distributed to:

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