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23-ORD-026

February 7, 2023

In re: Tyler Fryman/McCracken County Sheriff's Office

Summary: The McCracken County Sheriff's Office ("the Sheriff's Office") did not violate the Open Records Act ("the Act") when the email address of its records custodian, listed on its website per KRS 61.876(2)(b), was temporarily inaccessible due to a technical error. However, the Sheriff's Office misdirected the requester, within the meaning of KRS 61.880(4), when it represented that requests to inspect records could be submitted by facsimile to a number where "no fax machine [was] detected."

Open Records Decision

On January 8, 2023, Tyler Fryman ("Appellant") submitted a request to inspect records to the Sheriff's Office, using the email address of the records custodian listed on the Sheriff's Office website. However, the Appellant's request was returned as undeliverable with a message stating that "[t]he group sheriffrecordsrequest [sic] only accepts messages from people in its organization or on its allowed senders list." The Appellant then attempted to send his request to the fax number listed on the Sheriff's Office website, but the facsimile transmission was undeliverable due to "[n]o fax machine detected on the receiving end." This appeal followed.

Under the Act, "[e]ach public agency shall display in a prominent location accessible to the public, including on its Web site[, the] mailing address, e-mail address, and phone number of the official custodian of the custodian of the records or his or her designee to which all requests for public records shall be made." KRS 61.876(2)(b). The Appellant claims the Sheriff's Office violated this provision by failing to display a working email address or fax number for its records custodian on the website.

Although KRS 61.876(2)(b) does not require a public agency to display a fax number for its records custodian on its website, it does require the record custodian's email address to be displayed. On appeal, the Sheriff's Office explains that the email address stated on its website for its records custodian is correct, but it was temporarily unavailable due to a technical error. According to the Sheriff's Office, information technology personnel inadvertently changed the settings of the account while working on a previous technical issue so that it would only receive messages from inside the organization. The Sheriff's Office advises this problem has since been corrected. While the temporary unavailability of the email address may have prevented requests from reaching the records custodian, the Sheriff's Office did not violate KRS 61.876(2)(b) because it displayed the correct email address on its website.

The Appellant, however, also claims the Sheriff's Office violated the Act "by failing to accept a request via email or fax." Under the Act, a written application to inspect public records "shall be . . . [h]and delivered, [m]ailed, [s]ent by facsimile, or [s]ent via e-mail to the public agency's official custodian of public records or his or her designee at the e-mail address designated in the public agency's rules and regulations adopted pursuant to KRS 61.876." KRS 61.872(2)(b) (emphasis added). Here, the Sheriff's Office explained it did not intentionally refuse the Appellant's emailed request because a technical issue resulted in the records custodian's email address failing to accept the Appellant's email. The Sheriff's Office has further explained the technical malfunction has been corrected.¹

In contrast, the Sheriff's Office has not explained why no fax machine was detected when the Appellant attempted to send his request to the fax number listed on its website. Although the Act may not require a public agency to accept requests by facsimile, the Act does require a public agency to enact rules and regulations that explain how a request for records may be submitted. KRS 61.876(1)(d).² And 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 misdirection of the applicant." KRS 61.880(4). Furthermore, the public agency carries the burden of sustaining its action. KRS 61.880(2)(c).

Here, the Sheriff's Office's rules and regulations posted on its website state it would accept requests to inspect records through a certain fax number. But when the Appellant attempted to fax his request to that number, no fax machine was detected.

¹ After receiving notice of this appeal, the Sheriff's Office issued a response to the Appellant's request, which it granted in part and denied in part. That partial denial is not at issue in the present appeal.

² While KRS 61.872(2)(b) provides four acceptable methods of delivery, KRS 61.876(1)(b) only requires a public agency's rules and regulations to include "[t]he title, mailing address, and e-mail address of the official custodian of the public agency's records." The absence of any requirement to include a fax number in an agency's rules and regulations suggests the Act does not obligate a public agency to possess a fax machine or to actually accept requests to inspect records by facsimile.

The Sheriff's Office has not explained why it failed to receive the Appellant's transmission to the fax number listed in its rules and regulations. Because the Appellant's attempt to submit his request resulted in "no fax machine detected on the receiving end," and the Sheriff's Office has not met its burden to explain why that result occurred, the Sheriff's Office's rules and regulations misdirected the Appellant, within the meaning of KRS 61.880(4). *See* 20-ORD-055 (finding an agency misdirected an applicant by misstating the available means of submitting a request).

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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Distributed to:

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