



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-145

June 28, 2023

In re: Scott Roberts/Jefferson County Clerk

Summary: The Office cannot find that the Jefferson County Clerk (the “Clerk”) violated the Open Records Act (“the Act”) when she failed to respond to a request she did not receive as a result of a spam email filter.

Open Records Decision

On May 22, 2023, Scott Roberts (“Appellant”) emailed two requests to the Clerk to inspect various records relating to the May 2023 primary elections.¹ Although the Appellant received an automatic message acknowledging receipt of his email, he received no further response from the Clerk by May 31, 2023. This appeal followed.

Under KRS 61.880(1), 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.” On appeal, the Clerk explains she did not respond to the Appellant’s requests because the email account’s spam filter captured the Appellant’s email. Accordingly, the Clerk claims to have not received the request. This Office has previously found that the interception of requests by spam filters or other anti-phishing programs that prevents requests from reaching the recipient is tantamount to the agency not receiving the request. *See, e.g.*, 23-ORD-064. Accordingly, the Office cannot find that the Clerk violated the Act when she did not receive the request.

¹ Specifically, the Appellant sought video surveillance tapes of the election machines from 6:00 p.m. on May 16, 2023, to 6:00 p.m. on May 17, 2023. The Appellant also sought, “in spreadsheet format (.csv or .xlsx) [the Clerk’s] complete voter sign-in rosters for every precinct, absentee, early, and election day voters from the May 2023 primary.”

A party aggrieved by this decision may appeal it by initiating an 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/ Marc Manley
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Distributed to:

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