



COMMONWEALTH OF KENTUCKY  
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**23-ORD-148**

June 29, 2023

In re: Bobbie Coleman/Floyd County Clerk

**Summary:** The Floyd County Clerk (the “Clerk”) violated the Open Records Act (“the Act”) when he failed to respond to a request to inspect records within five business days.

***Open Records Decision***

On May 22, 2023, Bobbie Coleman (“Appellant”) emailed two requests to the Clerk to inspect various records relating to the May 2023 primary elections.<sup>1</sup> Having received no response by May 31, 2023, the Appellant initiated this appeal.

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 that, at the time he received the request, he had “just lost one of [his] staff and when the funeral was over [he] became sick and was unable to respond.” However, the Clerk responded to the Appellant’s request shortly before receiving notice of this appeal. The Office has previously found that the absence of an agency’s records custodian does not extend the deadline to respond under KRS 61.880(1). *See, e.g.*, 20-ORD-024; 98-ORD-161; 94-ORD-86. While the Office is sympathetic to the Clerk’s situation and finds the reasons for his absence

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<sup>1</sup> 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.”

more compelling than the reasons given in previous cases, the Act nevertheless requires a public agency to respond to every request to inspect records within five business days of receipt. Because the Clerk did not respond to the Appellant's requests within five business days of receiving them, the Clerk violated the Act.

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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/ Marc Manley  
Marc Manley  
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Distributed to:

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