



COMMONWEALTH OF KENTUCKY
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23-ORD-150

June 29, 2023

In re: Bobbie Coleman/Knott County Clerk

Summary: The Knott County Clerk (the “Clerk”) violated the Open Records Act (“the Act”) when she 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.¹ Having received no response by June 1, 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 claims the Appellant failed to submit the request to the Clerk’s official custodian of records. However, the Clerk does not specify who the official custodian of records is or provide the email address of that person. The Appellant’s request was emailed directly to the Clerk and the Clerk does not claim that she did not receive the email. “If *the person to whom the application is directed* does not have custody or control of the public record requested, *that person* shall notify the applicant and shall furnish the name and location of the official custodian

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.”

of the agency’s public records.” KRS 61.872(4) (emphasis added). If the Clerk is not the official custodian of the Clerk’s records, she was required under KRS 61.872(4) to notify the Appellant of that fact and provide the contact information for the official custodian, or alternatively, forward the request to the official custodian. *See Baker v. Jones*, 199 S.W.3d 749, 752 (Ky. App. 2006) (“The fact that requests may be sent by mail or by facsimile evidences a legislative intent that delivery to the office of the mayor was sufficient to trigger her obligation, as mayor, to comply with the requirements of the Open Records Act. The fact that [the mayor] personally never saw the request is irrelevant. To hold otherwise would be tantamount to encouraging our government officers to ‘bury their heads in the sand’ to public matters with which they are charged”); *see also* 19-ORD-132; 12-ORD-153. Accordingly, the Clerk violated the Act.²

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
Attorney General

s/ Marc Manley
Marc Manley
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Distributed to:

Bobbie Coleman
Maurica Cornett
Timothy C. Bates

² After the appeal was initiated, the Clerk provided responsive records other than the surveillance video. The Clerk advised the vendor would charge a fee to retrieve the surveillance video and that the Appellant would need to be prepared to pay that fee if she still wished to obtain the video. The Clerk did not, however, notify the Appellant of the total anticipated cost to actually reproduce the video.