



COMMONWEALTH OF KENTUCKY
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23-ORD-151

June 29, 2023

In re: Laura O'Brien/Caldwell County Clerk

Summary: The Caldwell County Clerk (the “Clerk”) did not violate the Open Records Act (“the Act”) when she did not respond to a request to inspect records she did not receive.

Open Records Decision

On May 23, 2023, Laura O'Brien (“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 explains she did not receive the Appellant’s request because it had been emailed to the previous clerk’s email address. The Clerk provided the Appellant with the correct email address to submit her requests. Because the Clerk did not receive the Appellant’s requests, she did not violate the Act by failing to respond to them within five business days.

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,” as well as “supplemental rosters for the May 2023 primary if any exist.”

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:

Laura O'Brien
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