



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-153

June 29, 2023

In re: Pam Cradic/Menifee County Clerk

Summary: The Office cannot find that the Menifee 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 23, 2023, Pam Cradic (“Appellant”) emailed two requests to the Clerk to inspect various records relating to the May 2023 primary elections.¹ Having received no further response from the Clerk 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 respond to the Appellant’s requests because the email account’s spam filter captured the Appellant’s email. Accordingly, the Clerk claims not to have 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

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.”

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.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
Assistant Attorney General

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Distributed to:

Pam Cradic
Krystal Chapman
Betty Megan Williams

² After the appeal was initiated, the Clerk responded to the requests and advised that neither the surveillance video nor the requested voter roster are available at this time. A public agency may delay access to public records that are “in active use, storage, or not otherwise available” if it notifies the requester of the earliest date on which the records will be available and gives a detailed explanation for the cause of delay. KRS 61.872(5). Although the Clerk explained that the video was unavailable because it must continue to record until 30 days after the election, KRS 117.295(1), she did not notify the Appellant of the earliest date on which the video would be available. Accordingly, the Clerk’s response failed to comply with KRS 61.872(5). The Clerk also did not explain why the voter rosters are currently unavailable or the earliest date on which those records would be available. However, the Office notes that numerous appeals involving multiple county clerks regarding the same records have been submitted. From all these appeals, it is clear the county clerks do not actually possess electronic copies of the voter rosters that can be made available for public inspection. Rather, the vendors with which they have contracted are responsible for providing the county clerks with electronic copies of the voter rosters, as only those vendors have access to the data contained within the e-polling signature devices from which the voter roster can be generated. As such, the voter rosters were not “in active use, storage, or not otherwise available” at the time of the request. Rather, they *did not exist* at the time of the request, and did not come into existence until created by the vendor.