



COMMONWEALTH OF KENTUCKY
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23-ORD-154

June 29, 2023

In re: Teresa Gilbert/McCreary County Clerk

Summary: The McCreary County Clerk (the “Clerk”) has not carried his burden of proof that he timely responded to a request submitted under the Open Records Act (“the Act”).

Open Records Decision

On May 23, 2023, Teresa Gilbert (“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.” In his response to this appeal on June 2, the Clerk states only that he mailed his response on Monday, which would have been Memorial Day, May 29, 2023. On June 22, 2023, the Office asked the Clerk to provide a copy of the response he claims to have sent. On June 29, 2023, the Office received by mail copies of his response to two other requests to inspect records the Appellant submitted on May 30, 2023. Under KRS 61.880(2)(c), the public agency carries the burden of proof to sustain its actions. Because the Clerk has not provided a copy of the response to the Appellant’s two

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.”

requests dated May 23, 2023, the Office cannot find that he timely responded to those requests. Accordingly, 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.

Daniel Cameron
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s/ Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Teresa Gilbert
Eric Haynes