



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

23-ORD-155

June 29, 2023

In re: Teresa Gilbert/Taylor County Clerk

Summary: The Taylor 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 22, the Clerk states only that he mailed his response on June 3, 2023.² The Clerk does not claim he did not receive the request on May 23. Under KRS 61.880(2)(c), the public agency carries the burden of proof to sustain its actions. Because the Clerk admits he did not send his response until June 3, which

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.”

² The Office also sent notice of the appeal to the county attorney, as it customarily does in appeals involving county agencies. In his response to the appeal, the Taylor County Attorney stated he had not previously received a copy of the request. That would be accurate, as the request was submitted to the Taylor County Clerk, not the Taylor County Attorney. In contrast, the Clerk did not claim he did not receive the requests.

was more than five business days after May 23, 2023, the Office cannot find his response was timely. 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
Attorney General

s/ Marc Manley
Marc Manley
Assistant Attorney General

#230

Distributed to:

Teresa Gilbert
Mark Carney
John D. Bertram