



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-157**

June 30, 2023

In re: Laura O'Brien/Union County Clerk

**Summary:** The Union County Clerk (the "Clerk") violated the Open Records Act ("the Act") when he failed to respond to a request to inspect records within five business days.

***Open Records Decision***

On May 24, 2023, Laura O'Brien ("Appellant") emailed two requests to the Clerk to inspect various records relating to the May 2023 primary elections.<sup>1</sup> The same day, the Clerk responded and advised the Appellant he was "leaving to go on vacation after work tomorrow." He asked the Appellant if she would "be ok" with him "not officially respond[ing] to this request" until he returned. The Appellant replied, "If there is no one else who can help provide it, then that is fine." However, she also asked the Clerk to "please give [her] a specific date that [she] could expect to have it by." Having received no further response by June 2, 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."

---

<sup>1</sup> 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."

After this appeal was initiated, the Clerk responded to the Appellant's request on June 5, 2023. He claims his response was timely because he notified the Appellant he was leaving for vacation and asked her if he could respond upon his return. He claims the Appellant accepted his request for accommodation. However, the Appellant's purported acceptance of the Clerk's request was conditional: she asked him to provide "a specific date" on which she could expect a response, which the Clerk did not provide. Then, when the Clerk did not issue a response within five business days of receiving the request, she initiated this appeal. Therefore, the record does not reflect a meeting of the minds as to whether the Appellant granted the Clerk an extension of time to respond. Moreover, the absence of an agency's official records custodian does not alleviate the agency of its duty to determine within five business days whether it will grant or deny a request. *See, e.g.*, 20-ORD-024; 98-ORD-161; 94-ORD-86. Accordingly, the Clerk violated the Act when he failed to issue a written response to the requests within five business days of receiving them.

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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

#233

Distributed to:

Laura O'Brien  
Garrick Thompson