



COMMONWEALTH OF KENTUCKY
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23-ORD-158

June 30, 2023

In re: Teresa Gilbert/Russell County Clerk

Summary: The Russell County Clerk (the “Clerk”) violated the Open Records Act (“the Act”) when she failed to respond to a request to inspect records within five business days.

Open Records Decision

On May 24, 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 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.” Here, the Clerk admits she “overlooked” the Appellant’s requests, and therefore, did not respond within five business days. Accordingly, the Clerk violated the Act when she failed to respond to the Appellant’s requests within five business days of receiving them.²

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.”

² After the appeal was initiated, the Clerk contacted a vendor to retrieve the surveillance video from the system. The Clerk is allegedly unable to reproduce the video without the assistance of the vendor, who in this instance, allegedly charged a \$150.00 fee. The Clerk has informed the Appellant she may obtain the video after paying the actual cost of reproducing the record, which includes the vendor’s fee. The Clerk “may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed *the actual cost of reproduction*, including

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:

Teresa Gilbert
Patti Glover
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the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required.” KRS 61.874(3). The vendor’s fee is an “actual cost of” reproducing the requested record incurred by the Clerk. It is no different than the fee charged by banks to reproduce copies of checks, which this Office has found can be passed on to the requester as an “actual cost of reproduction.” *See, e.g.*, 16-ORD-239; 14-ORD-177; 10-ORD-140. As such, the Clerk may charge the Appellant “the actual cost of” reproducing the video, including the vendor’s fee for obtaining it, if the Clerk can substantiate with an invoice or other evidence that the vendor actually charged \$150.00. The Clerk has also made available to the Appellant a copy of the electronic voter signature rolls.