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**23-ORD-159**

July 5, 2023

In re: Brandon Thomas/Ohio County 911 Central Dispatch Center

**Summary:** The Ohio County 911 Central Dispatch Center (“the agency”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), when it did not meet its burden to show that fees assessed for copies of audio records reflected its actual costs of reproduction, as required under KRS 61.874(3).

***Open Records Decision***

On May 22, 2023, Brandon Thomas (“Appellant”) requested copies of all “[a]udio and printed records” related to towing between January 1 and May 22, 2023, “[i]ncluding all city and county agencies within Ohio County.” According to the Appellant, he was informed the copying fee for audio recordings was \$10.00 each.<sup>1</sup> The Appellant therefore amended his request to seek printed records only, but initiated this appeal to seek a determination that the fee for audio recordings was excessive.

Under KRS 61.880(4), a person requesting records may appeal to the Attorney General if he believes “the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees.” The Act provides that a “public agency 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 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). Under KRS 61.880(2)(c), a public agency bears the burden of proof that its copying fees reflect the actual cost of reproduction.

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<sup>1</sup> To substantiate this claim, the Appellant provides a blank “Open Record Request” form used by the agency, which quotes a rate of “\$10 for copy of CAD [Computer Aided Dispatch], \$10 for Recording of Call.”

On appeal, the agency states it will provide the audio records to the Appellant at the rate of 10 cents per recording instead of the \$10.00 rate previously quoted. However, the agency still has the burden of substantiating its actual costs. In response to inquiries from this Office, the agency has indicated it will provide the audio files on a CD, the actual cost of which is 27 cents. Thus, if the agency provides more than two audio files at 10 cents per file on one CD, the fee will exceed the cost of the CD.

In addition to recovering the “actual cost of reproduction” under KRS 61.874(3), a public agency may charge a “mechanical processing cost,” or the proportionate cost of maintaining copying equipment. Here, the agency asks this Office to consider that “the system used to process CADs costs [the agency] around \$3,700.00 per month with the computers used to record about \$3,466 each (3 total computers)” and “[t]he computer with disc drawer costs approximately \$649.00.” However, the agency admits that all this equipment is “certainly used for business activities and duties of [the agency] in general,” and therefore, these equipment expenses “are not solely related to reproduction of records cost.” The agency further admits that “[i]t is difficult to allocate these costs so [the agency is] reviewing same to see what the true cost to [sic] be,” but in this case, “10 cents will be charged” for each audio recording.

In other words, the agency claims it incurs mechanical processing costs associated with reproducing the audio files in addition to the actual cost of the CD but is unable to quantify them. Because the agency bears the burden of proof under KRS 61.880(2)(c), this Office must conclude it has failed to substantiate any actual costs above the cost of the CD itself, which the agency admits is 27 cents. Therefore, the agency subverted the intent of the Act within the meaning of KRS 61.880(4) by imposing an excessive fee.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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/ James M. Herrick  
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Assistant Attorney General

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Distributed to:

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