



COMMONWEALTH OF KENTUCKY
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23-ORD-163

July 6, 2023

In re: Scott Roberts/Muhlenberg County Clerk

Summary: The Muhlenberg County Clerk (the “Clerk”) violated the Open Records Act (“the Act”) when she failed to appropriately respond to a request to inspect records.

Open Records Decision

On May 30, 2023, Scott Roberts (“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 12, 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.” Or, if responsive records are “in active use, in storage or not otherwise available,” a public agency may delay access to them by stating the earliest date on which they will be available and a detailed explanation of the cause of the delay. KRS 61.872(5).

However, this Office has consistently found it is unable to resolve factual disputes between a requester and a public agency, such as whether a requester

¹ Specifically, the Appellant sought “the final signed or most recent unsigned contract and/or purchase agreement with the vendor for e-pollbooks” used during the May 2023 primary elections as well as an invoice or other documents which “show pricing, scope of services, and full terms of the contract.” The Appellant also sought “the final signed or most recent unsigned contract and/or purchase agreement with the vendor for video surveillance of election machines” for the thirty days following the May 2023 primary election elections as well as an invoice or other documents which “show pricing, scope of services, and full terms of the contract.”

received an agency's response to a request. *See* 21-ORD-233 (agency claimed it issued a response but the requester claimed he did not receive it); *see also* 22-ORD-125 (agency claimed it did not receive the request); 22-ORD-100 (same); 22-ORD-051 (same); 21-ORD-163 (same).

Here, the Clerk provides a copy of the response she claims to have mailed to the Appellant on June 5, 2023, which was the fourth business day after the Appellant submitted his request. Accordingly, this Office cannot resolve the factual dispute between the parties about whether the Clerk issued the response or whether the Appellant received it, and therefore, cannot find that the Clerk's response was untimely in violation of the Act.

However, the Clerk's response neither granted nor denied the Appellant's request. It stated only that the Clerk is "in the process of formulating [its] response and anticipate[s] completion within the next thirty (30) days." Further, the Clerk did not give a detailed explanation for the cause of the delay. KRS 61.872(5). Therefore, the Clerk violated the Act when she did not respond appropriately to the Appellant's request.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
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Distributed to:

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