



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-172**

July 11, 2023

In re: Cassi Schabell/Pendleton County Clerk's Office

**Summary:** The Pendleton County Clerk's Office (the "Clerk's Office") violated the Open Records Act ("the Act") when it failed to issue responses to requests within five business days of receiving those requests.

***Open Records Decision***

On May 23, 2023, Cassi Schabell ("Appellant") submitted two requests to the Clerk's Office for an electronic copy of records related to the May 2023 primary election.<sup>1</sup> On June 1, 2023, the Clerk responded, invoked KRS 61.872(5), and notified the Appellant that the requested surveillance video was in active use under KRS 117.295(1). The Clerk then invited the Appellant to resubmit her request after the video became available on June 16. The Clerk also stated the requested electronic signature rolls did not exist, as the vendor had not yet produced them. The Clerk further stated she was not required to convert hard copies of records into an electronic format, and when the requested record became available the Appellant should be prepared to pay associated copying and mailing costs.

On June 8, 2023, the Appellant submitted two more requests. This time, she asked for the "most recent" contract between the Clerk and the vendor related to its production of the electronic signature rolls and retrieving the requested surveillance

---

<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."

video. On June 12, 2023, the Clerk responded and informed the Appellant that records responsive to all four of her requests were now ready for delivery. However, the Clerk asked the Appellant to pay \$109.50 in fees, including postage, before she would provide them. The Appellant asked for an itemized invoice regarding the fee, which showed the relevant costs as \$19.50 for paper copies, \$10.00 for a USB drive, \$75.00 for “video upload by vendor,” and \$5.00 for postage. After the parties exchanged additional emails disputing the fee, the Appellant initiated this appeal.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). A public agency may also delay access to responsive records if such records are “in active use, storage, or not otherwise available.” KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must also notify the requester of the earliest date on which the records will be available, and provide a detailed explanation for the cause of the delay. Here, the Clerk admits her initial response to the Appellant’s first two requests was untimely because it was issued on the sixth business day after receipt. Accordingly, the Clerk violated the Act when she failed to issue a timely response.<sup>2</sup>

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).

---

<sup>2</sup> The Appellant also alleges the Clerk improperly invoked KRS 61.872(5) by stating the requested video would not be available until June 16, yet the Clerk was able to provide the video before that date, on June 12. She also claims the Clerk has charged an inappropriate fee. On appeal, the Clerk advises she has provided all responsive records to the Appellant free of charge. Thus, whether the Clerk’s initial estimate that the video would not be available until June 16, or whether it charged an appropriate fee, are now moot. *See* 40 KAR 1:030 § 6 (“If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter”).

**Daniel Cameron  
Attorney General**

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

#256

Distributed to:

Cassi Schabell  
Stacey S. Sanning  
Rita Spencer