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**23-ORD-197**

August 1, 2023

In re: Scott Roberts/Trimble County Clerk

**Summary:** The Trimble County Clerk (“the Clerk”) did not violate the Open Records Act (“the Act”) when she timely responded to a request to inspect records stating the requested records did not exist. However, after those records were created, the Clerk violated the Act when she denied the request without adequately explaining how the exception on which she relied applied to the records withheld.

***Open Records Decision***

On May 22, 2023, Scott Roberts (“Appellant”) submitted a request to the Clerk to inspect records relating to the May 2023 primary elections.<sup>1</sup> On May 26, 2023, the Clerk stated that the requested electronic signature rolls did not exist because the vendor had not yet produced them.

On June 27, the Clerk issued a supplemental response and advised the Appellant that it would not be producing the electronic signature rolls because “it is a large document which contains personal information of the voter.” Although she cited KRS 61.878(1)(a) and KRS 61.872(6) as grounds for her denial, she did not explain how those exceptions applied to records withheld. This appeal followed.

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

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<sup>1</sup> Specifically, the Appellant 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” and “supplemental rosters . . . if any exist.”

person making the request, within the five (5) day period, of its decision.” Here, on May 26, the fourth business day after receiving the request, the Clerk stated the requested records do not exist because they had not been created yet. Because the Clerk informed the Appellant that the records did not exist within five business days of receiving the request, her first denial did not violate the Act.

After the vendor provided the Clerk with the records, she issued a final response denying the request. If the agency chooses to deny a request to inspect records, it “shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.* An agency response denying a request for records must explain the denial by “provid[ing] particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013).

In the Clerk’s June 27 supplemental response, she quoted the text of KRS 61.878(1)(a) and KRS 61.872(6) and stated only that the record “is a large document which contains personal information of the voter.” The Clerk did not describe the “personal information” that needed to be withheld, or how “large” the document was. Accordingly, the Clerk’s limited and perfunctory response violated the Act.

Regarding the basis of the Clerk’s denial, if a request for records “places an unreasonable burden in producing public records” on an agency, then “the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.” KRS 61.872(6). On appeal, the Clerk explains that the record contains the addresses and dates of birth of registered voters. She claims the request is unreasonably burdensome because she would have to “manually redact” this information “from each of the 7,068 voter entries.”

The Clerk is correct that the personal addresses and dates of birth of the voters should be redacted under KRS 61.878(1)(a). *See Ky. New Era*, 415 S.W.3d at 87 (holding phone numbers, addresses, driver’s license numbers may be routinely redacted under KRS 61.878(1)(a)); *see also* 22-ORD-206 (agency properly redacted dates of birth under KRS 61.878(1)(a)). However, the Clerk claims that redacting this information from about 7,000 entries is unreasonably burdensome.

When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction. *See, e.g.*, 97-ORD-088 (finding that a request implicating thousands of physical files pertaining to nursing facilities was unreasonably burdensome, where the files were maintained in physical form in several locations throughout the state, and each file was subject to confidentiality provisions under state and federal law). In addition to these factors, the Office has found that a public agency may demonstrate an unreasonable burden if it does not catalogue its records in a manner that will permit it to query keywords mentioned in the request. *See, e.g.*, 96-ORD-042 (finding that it would place an unreasonable burden on the agency to manually review thousands of files for the requested keyword to determine whether such records were responsive).

Neither the number of records at issue nor the fact they must be redacted, in isolation, is dispositive of whether a request is unreasonably burdensome. But the combination of these factors, as well as the other factors discussed above, are what make requests unreasonably burdensome under KRS 61.872(6). Here, the only burden identified by the Clerk is “several days of [her] time to redact all the exempted information.” But “the obvious fact that complying with an open records request will consume both time and manpower is, standing alone, not sufficiently clear and convincing evidence of an unreasonable burden.” *Commonwealth, Dep’t of Ky. State Police v. Courier Journal*, 601 S.W.3d 501, 506 (Ky. App. 2020) (holding that the Kentucky State Police had not met its burden that redacting personal information from its entire uniform citation database constituted an unreasonable burden). Accordingly, the Clerk violated the Act when she denied the request under KRS 61.872(6) without providing clear and convincing evidence supporting her denial.

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).

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