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**23-ORD-213**

August 14, 2023

In re: Courtney Gilbert/Green County Clerk

**Summary:** The Green 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. The Clerk also violated the Act by charging a copying fee to facilitate redaction of an electronic record.

***Open Records Decision***

On May 23, 2023, Courtney Gilbert (“Appellant”) emailed two requests to the Clerk to inspect various records relating to the May 2023 primary elections.<sup>1</sup> 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.” On appeal, the Clerk admitted she failed to respond within five business days because she had been out of the office and did not see the request until her return. Accordingly, the Clerk violated the Act.

After the appeal was initiated, the Clerk offered to provide a copy of the surveillance video on a USB flash drive for \$10.00, plus postage. The Appellant agreed to this cost, and therefore, any issue regarding the surveillance video is now

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<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.”

moot. *See* 40 KAR 1:030 § 6. The Clerk also offered to provide paper copies of the electronic voter roster at \$0.10 per page. Unlike the fee for the surveillance video, the Appellant does object to the \$0.10 per page copying fee because she asked for the record in electronic format.

Under KRS 61.874(3), “The 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.” However, if “a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.” *Id.* Thus, whether an agency may charge an increased fee for electronic records turns on whether the records exist in standardized or nonstandardized format.

Under KRS 61.874(2)(b), the standardized format for electronic records is a record that is “in a flat file electronic American Standard Code for Information Interchange (ASCII) format.” This Office has previously found that PDF format is a “standard format” under KRS 61.874(2)(b). *See, e.g.*, 11-ORD-085. As such, the Clerk may only recover the “actual cost” of reproducing the PDF file for the Appellant’s inspection.

To substantiate the cost, the Clerk states she was unable to redact the electronic version of the record and had to print it to redact the dates of birth and addresses. While the Clerk should make redactions to that PDF file under KRS 61.878(1)(a) to remove dates of birth, she cannot pass on to the Appellant the cost of printing the records and manually redacting them. *See Commonwealth, Dep’t of Ky. State Police v. Courier Journal*, 601 S.W.3d 501, 508 (Ky. App. 2020) (the agency’s inability to redact records in its database other than by manual redaction did not permit it to pass on the reproduction costs to the requester); *see also* 23-ORD-173 (holding another county clerk charged an excessive fee by passing on the cost of redacting the electronic voter roster to another requester). Accordingly, the Clerk violated the Act by charging a copying cost that was incurred solely because of the need to redact the record.

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).

**Daniel Cameron**  
**Attorney General**

s/ Marc Manley  
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Assistant Attorney General

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Distributed to:

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