



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-215

August 14, 2023

In re: Bobbie Coleman/Harlan County Clerk

Summary: The Harlan County Clerk (the “Clerk”) violated the Open Records Act (“the Act”) when she imposed a fee in excess of the actual cost to reproduce a record.

Open Records Decision

On May 23, 2023, Bobbie Coleman (“Appellant”) emailed a request to the Clerk to inspect surveillance videos of the election machines used for the May 2023 primary elections that were recorded between 6:00 p.m. on May 16, 2023, and 6:00 p.m. on May 17, 2023.¹ In a timely response, the Clerk granted the request, but advised that the cost of a flash drive on which to copy the video, plus labor and shipping costs, “will range between \$300-400.” The Appellant then initiated this appeal, alleging the Clerk had imposed an excessive fee.

The Clerk “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). The vendor’s fee is an “actual cost of” reproducing the requested record incurred by the Clerk. *See, e.g.*, 23-ORD-178 (vendor charged \$500 to reproduce a surveillance video); 23-ORD-158 n. 2 (vendor charged \$150 to reproduce a surveillance video). The vendor’s fee is no different than the fee charged by banks to reproduce copies of checks, which this Office has found can be passed on

¹ 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 election. However, the Appellant does not challenge the Clerk’s disposition of that request.

to the requester as an “actual cost of reproduction.” *See, e.g.*, 16-ORD-239; 14-ORD-177; 10-ORD-140.

Here, the Clerk provides an estimate from the vendor stating its labor cost to retrieve the video is \$315.00, which is based on an estimated 4.5 hours of work at the rate of \$70.00 per hour. If the vendor, in fact, requires 4.5 hours to retrieve the video, then the estimate will reflect the actual cost of reproducing the video. In that case, the cost charged by the vendor to the Clerk would be a recoverable cost under KRS 61.874(3).

However, the vendor’s estimate also reflects a charge for two USB flash drives. Each drive costs \$16.25. The vendor states two are necessary because “the DVR doesn’t store the files indefinitely and if a copy isn’t retained any future requests for the same files” would be unavailable “without this archive copy.” While the Clerk may recoup from the Appellant the \$16.25 cost of the one flash drive that will be sent to her, consistent with KRS 61.874(3), the Clerk may not also charge the Appellant for the flash drive she will retain to respond to future requests for the same record. Accordingly, the Clerk imposed an excessive fee by charging an additional \$16.25 for the second flash drive.

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
Attorney General

s/ Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:
Bobbie Coleman
Ashley Sullivan