



COMMONWEALTH OF KENTUCKY  
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**23-ORD-216**

August 14, 2023

In re: Bobbie Coleman/Letcher County Clerk

**Summary:** The Letcher County Clerk (the “Clerk”) violated the Open Records Act (“the Act”) when he failed to respond to a request for records within five business days. The Clerk did not violate the Act when he denied a request for records that do not exist.

***Open Records Decision***

On May 23, 2023, Bobbie Coleman (“Appellant”) emailed two requests to the Clerk to inspect various records relating to the May 2023 primary elections.<sup>1</sup> In a timely response, the Clerk denied the Appellant’s request for video surveillance of the election machines records between 6:00 p.m. on May 16, 2023 to 6:00 p.m. on May 17, 2023, because he “does not have any video surveillance footage of the election machines used in the May 2023 primary election.” The Clerk did not respond to the Appellant’s request for the “complete voter sign-in rosters for every precinct, absentee, early, and election day voters from the May 2023 primary” in “spreadsheet format (.csv or .xlsx).”

Following additional correspondence regarding the surveillance video, in which the Clerk amended his response by stating, “After the 30 days is up, [the Appellant] can come to our county and get with a technician and see how much he will charge,” the Appellant submitted another request on May 30, 2023, asking for a copy of any written contract between the Clerk and a vendor to perform video

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<sup>1</sup> Specifically, the Appellant sought surveillance videos 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 election.

surveillance of the election machines. In a timely response, the Clerk stated no such contract exists. 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 person making the request, within the five (5) day period, of its decision.” Although the Clerk timely responded to the Appellant’s request for surveillance video, stating it did not exist, the Clerk failed to address the Appellant’s request for the complete voter roster for the May 2023 primary election. Accordingly, the Clerk violated the Act when he failed to issue a response to the Appellant’s request.<sup>2</sup>

On appeal, the Clerk continues to assert that no contract or surveillance video matching the Appellant’s description exists. Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to present a *prima facie* case that additional records do exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). A requester must provide some evidence to support a *prima facie* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record, or other factual support for the existence of the records. See, e.g., 21-ORD-177; 11-ORD-074.

Under KRS 117.295(1), “[f]or a period of thirty (30) days following any election, the voting equipment shall remain locked against voting, the ballot boxes containing all paper ballots shall remain locked, and the voting equipment and ballot boxes shall be under video surveillance.” Thus, the Appellant has made a *prima facie* case that surveillance video of the election equipment should exist. Accordingly, the Clerk must explain the adequacy of his search, or explain why no responsive record exists. See *Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011). Here, the Clerk explains that the election equipment was not collected and put into storage until after 6:00 p.m. on May 17, 2023. Accordingly, the surveillance equipment did not start recording until after the time designated in the Appellant’s request, and no video matching her description exists. Accordingly, although the Appellant has made a *prima facie* case the video should exist, the Clerk has explained why it does not.

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<sup>2</sup> After the appeal was initiated, the Clerk advised that he had obtained the complete voter roster from the vendor. However, it is not clear whether the Clerk provided this record to the Appellant. Other than the Clerk’s failure to respond to this request, the Appellant has not alleged any other issues with obtaining a copy of this record.

In contrast to the surveillance video, the Appellant has not made a *prima facie* case that a contract exists between the Clerk and a vendor regarding surveillance equipment or services in connection with the surveillance. The Clerk continues to assert no such contract exists. KRS 117.295 does not require the county clerks to use a third party to conduct surveillance of the election machines for the statutory period. Accordingly, the Office cannot find that the Clerk violated the Act by denying a request for a record that does not exist.

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  
Marc Manley  
Assistant Attorney General

#237

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