



COMMONWEALTH OF KENTUCKY  
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**23-ORD-231**

August 29, 2023

In re: Cassandra Schabell/Campbell County Clerk

**Summary:** The Campbell County (“the Clerk”) did not violate the Open Records Act (“the Act”) when he responded timely to a request to inspect records stating the record did not yet exist, or when he provided an electronic record in its official format. However, the Clerk violated the Act when he charged a copying fee to facilitate redactions.

***Open Records Decision***

On May 23, 2023, Cassandra Schabell (“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 on May 31, 2023, the Clerk stated he was “not in possession” of the requested voter sign in roster because it was still in the possession of the vendor who was creating the record. The Clerk anticipated receiving the record by June 9, 2023. On June 23, 2023, the Clerk advised he now possessed the voter sign-in roster, but it was too large to send by email. Therefore, he intended to place the record on a USB flash drive and charge \$5.00 to recover the actual cost of reproducing the record. However, before the Appellant paid for and obtained the record, the Clerk sent additional correspondence on July 6, 2023, claiming he needed to redact from the record dates of birth. Because he was unable to perform the redactions on the electronic file, he intended to print the record and manually redact the information from the physical record and charge \$0.50 per page under KRS 64.019. This appeal followed.

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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 primary elections.

The Appellant first alleges the Clerk failed to respond to her request timely. 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.” Here, the Clerk received the request on May 23 and responded on May 31 that he did not possess the requested record. Because May 29, 2023, was Memorial Day, the Clerk’s response was timely issued within five business days of receiving the request.

The Appellant also challenges the Clerk’s claim that the requested record exists only in PDF format. In two recent decisions, the Office has explained why this specific record exists only in PDF format. *See, e.g., 23-ORD-210; 23-ORD-211.* To qualify as the “official record” of the voter roster for the primary election, the record must conform to the format as established by the State Board of Elections (“SBE”) under KRS 117.025(3)(d). Moreover, “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.” KRS 61.874(3) (emphasis added). Here, a request to produce the record in a format other than that established by the SBE is a request to tailor the format according to the request of an individual. The Act does not require the Clerk to comply with such a request and instead leaves that decision to his discretion under KRS 61.874(3). Accordingly, the Clerk did not violate the Act by refusing to provide the record in a format tailored to the Appellant’s request.

However, the Clerk did violate the Act when he sought to charge the Appellant a copying fee that reflected the cost to redact the record. As stated recently in 23-ORD-213, “[w]hile the Clerk should make redactions to [the] 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).” The same is true here. As such, while the Clerk may redact from the record the dates of birth and addresses of voters under KRS 61.878(1)(a), he may not pass along the cost of doing so when the

original record exists in electronic format and there is no “actual cost” to reproducing the electronic 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.

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

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

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Distributed to:

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