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**23-ORD-286**

October 24, 2023

In re: Kurt Wallace/Metcalf County Fiscal Court

**Summary:** The Metcalfe County Fiscal Court (“the Fiscal Court”) violated the Open Records Act (“the Act”) when it failed to respond to a request for records. The Fiscal Court also violated the Act when it failed to post on its website its rules and regulations for submitting requests to inspect records and the contact information of its official records custodian.

***Open Records Decision***

On September 21, 2023, Kurt Wallace (“Appellant”) emailed a complaint to the Metcalfe County/Judge Executive (“Judge/Executive”) alleging the Metcalfe County Clerk had violated the Open Records Act. *See* 23-ORD-285. While the email could have easily been confused as an Open Meetings Act complaint under KRS 61.846(1), the Appellant nevertheless described public records he wanted to inspect: the Fiscal Court’s general liability insurance policy, its excess liability insurance policy, errors and omission liability insurance policy, and wrongful acts liability insurance policy. The Appellant also complained that the website <https://metcalfecounty.ky.gov> did not identify the Fiscal Court’s official records custodian. Having received no response to his email, the Appellant initiated this appeal.

When an agency receives a request to inspect records under the Open Records Act, it “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.” KRS 61.880(1).

In 23-ORD-285, the Office addressed the Appellant's underlying request for records that gave rise to this appeal. As explained in that decision, the Appellant appears to have confused the requirements of the Open Meetings Act with the requirements of the Open Records Act. Indeed, the Appellant's request to inspect various insurance policies appeared under a heading he labeled "remedy requested." See KRS 61.846(1) (requiring a complaint under the Open Meetings Act to include a statement of the alleged violations and a requested remedy). As such, the Office can understand why the Metcalfe County Judge/Executive did not realize that the Appellant had also described records he wanted to inspect. Nevertheless, because the Open Meetings Act requires a response within three business days, KRS 61.846(1), the Metcalfe County Judge/Executive presumably read the complaint in full, including the "remedy requested." Accordingly, he should have seen the Appellant's description of records he wanted to inspect, *i.e.*, various insurance policies. Having received a request describing records to be inspected, the Fiscal Court was obligated to respond to it within five business days of receipt. KRS 61.880(1). It did not do so, and therefore, it violated the Open Records Act.<sup>1</sup>

Moreover, in his September 21 email, the Appellant alleged the Fiscal Court's website did not contain the contact information for its official custodian of records. "Each public agency shall display in a prominent location accessible to the public, including on its Web site," the agency's "rules and regulations pertaining to public records," "[t]he mailing address, e-mail address, and phone number of the official custodian of the records or his or her designee to which all requests for public records shall be made," and "[t]he form developed by the Attorney General under [KRS 61.876(4)] that may be used to request public records." KRS 61.876(2) (emphasis added). On appeal, the Fiscal Court does not provide proof its website complies with KRS 61.876. Rather, it argues it is not responsible for the Clerk's website. While that may be true, the Fiscal Court's own website does not comply with KRS 61.876. Accordingly, it violated the Act.

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<sup>1</sup> The Fiscal Court explains on appeal that, because the underlying request sought records in the Metcalfe County Clerk's possession, the Metcalfe County Judge/Executive notified the Clerk of the Appellant's correspondence. However, under KRS 61.872(4), "[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records." Thus, at a minimum, the Metcalfe County Judge/Executive should have responded within five business days and informed the Appellant that the Fiscal Court was not the custodian of the requested records. But as explained, the Appellant's email contained a request to inspect the Fiscal Court's insurance policies, which was a request to inspect records that was distinct from the request he submitted to the Clerk.

In sum, the Fiscal Court violated the Act when it failed to respond to the Appellant's request to inspect records within five business days. The Fiscal Court also violated the Act by failing to post on its website its rules and regulations for submitting requests to inspect records and the contact information of its records custodian.

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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