COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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26-ORD-440

October 1, 2026

In re: Amber McClellan/Estill County Clerk and Estill County Judge/Executive

Summary: The Estill County Clerk and the Estill County Judge/Executive violated the Open Records Act ("the Act") by failing either to provide the requester with all existing, responsive, and nonexempt records, or to properly invoke KRS 61.872(5) by providing a detailed explanation of the cause for the delay in providing some records and the earliest date on which those records would be made available, within five business days.

Open Records Decision

On August 24, 2026, after the close of business, Amber McClellan ("the Appellant") submitted two separate requests to Estill County. Specifically, she submitted requests to the Estill County Clerk ("the Clerk")[1] and the Estill County

[1] From the Clerk, the Appellant requested copies of the following records: (1) the "complete Estill County Animal Shelter feasibility study, including the final report and all attachments, exhibits, appendices, supporting materials, and related records"; (2) "[a]ny draft, proposed, preliminary, or completed plans or proposals for a new Estill County Animal Shelter building, including architectural plans, blueprints, drawings, site plans, building concepts, proposals, and related records"; (3) "[a]ll invoices, estimates, contracts, purchase orders, receipts, and other records showing fees or costs associated with the feasibility study or any proposed new shelter building, including payments to architects, engineers, consultants, designers, and other vendors"; (4) "[a]ll correspondence concerning the feasibility study or any proposed new shelter, including emails, letters, and other communications discussing the study, building plans, costs, funding, proposals, or next steps"; (5) "[a]ll Estill County Fiscal Court, county commission, committee, and other county meeting records related to the animal shelter or any proposed new shelter, including agendas, minutes, recordings, notices, packets, exhibits, presentations, memoranda, and related materials"; (6) "[a]ll records of votes, motions, resolutions, orders, and other official actions taken by the Fiscal Court, county commission, committees, or other county bodies concerning the animal shelter, feasibility study, proposed new shelter, funding, construction, renovation, relocation, or related matters"; and (7) "[a]ll emails and other electronic communications between or among Estill County magistrates concerning the animal shelter, feasibility study, proposed new shelter, building plans, costs, funding, contracts, meetings, votes, or related matters[,]" to include "communications sent from or received through county email accounts,

Judge/Executive ("the Judge/Executive"),[2] concerning the Estill County Animal Shelter ("the Shelter"). Because the Appellant had not received "an acknowledgement, a request for clarification, a notice that additional time was needed, a denial, or any records in response to either request," she initiated this appeal by email at 5:11 p.m. on September 1, 2026.[3]

Upon receiving notice of this appeal from the Office, the Estill County Attorney responded on behalf of the Clerk and the Judge/Executive by separate letters dated September 14, 2026.[4] The Clerk does not believe that she committed a violation of the Act because "the initial e-mail request was sent after business hours on August 24, 2026[,]" and she "stayed after hours to send the requisite e-mail response within five business days." The Clerk advises that she "then proceeded to comply" with the Appellant's request.

However, the Judge/Executive acknowledges that his office "was in technical violation by failing to respond" but explains that the Appellant "had filed a previous lengthy request for documents on August 17, 2026, which was delivered on August 24, 2026, the same day that the next open records request was sent." For this reason, the Judge/Executive failed to respond, "as the request was thought to have been correspondence regarding the previous request." The Appellant subsequently made

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personal emails accounts use for county business, and all attachments and related records, to the extent they are public records."

[2] The Appellant requested from the Judge/Executive "copies of public records relating to the Estill County Animal Shelter and animal-control operations" for the period of August 24, 2024, through August 24, 2026, divided into nine categories which, in turn, each consisted of multiple subcategories. She clarified that said request "is separate from my previous request concerning the new/proposed animal shelter, blueprints, studies, and related planning records," and stated that she is "not requesting those records again."

[3] The Appellant sent a follow-up email concerning the status of her pending requests at 5:13 p.m. on September 1, 2026, and the Clerk sent a response later that evening, at 8:21 p.m., acknowledging receipt of the Appellant's request but only stated that she was "in the process of determining the amount of time [necessary] to obtain these records subject to exceptions" and indicating, without further explanation, that she would "be able to give" the Appellant "an anticipated production date of Friday, [September 4]." Because the Clerk did not send this response until after the Appellant initiated her appeal, the Office finds that any issues regarding the merits of this response are not ripe for review under KRS 61.880(2)(a).

[4] The County Attorney asks the Office to provide guidance regarding the application of KRS 61.872(3)(b) (requiring a resident to "precisely describe" records that are "readily available" to receive copies by mail) and KRS 61.872(2)(a) (permitting a public agency to require a requester to provide a written statement "of the manner in which the [requester] is a resident of the Commonwealth under KRS 61.870(10)(a) to (f)"). However, KRS 61.880(2)(a) defines the parameters of the Office's jurisdiction and provides that the Attorney General "shall review the request and denial and issue within twenty (20) days . . . a written decision stating whether the agency violated provisions of [the Act]." As such, the Office cannot issue guidance related to the present appeal. The Office notes that it has issued decisions construing both KRS 61.872(3)(b), *see* 26-ORD-144; 26-ORD-098, and KRS 61.872(2)(a), *see* 26-ORD-309; 25-ORD-116; 22-ORD-245.

two additional requests in September and the Judge/Executive "was tasked with trying to compile the documents and missed identifying that it needed to respond to this particular request." The Judge/Executive states that he is "not denying the request in any fashion and is currently in the process of identifying and gathering the records requested," in addition to attempting to develop a process by which to identify and flag new requests upon receipt.

Under the Act, upon receipt of a request for public records a public agency must determine "within five (5) [business] days . . . 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).

The Appellant submitted her first request at 4:34 p.m. on August 24.[5] Under KRS 446.030(1)(a), "[i]n computing any period of time prescribed . . . by any applicable statute or regulation, the day of the act, event or default after which the designated period of time begins to run is not to be included." *See* 24-ORD-046. Accordingly, the Clerk is not deemed to have received the request until the following business day, August 25, and her written response was due on or before the close of business on September 1. The Appellant did not receive a written response before the close of business on September 1, and the Clerk therefore violated the Act, specifically, KRS 61.880(1).

The Judge/Executive acknowledges that his office did not send a written response within five business days of receiving the Appellant's August 24 request and, therefore, violated the Act. Based upon the foregoing, the Office finds that the Clerk and the Judge/Executive failed to comply with KRS 61.880(1) by sending written responses within five business days of receiving the Appellant's August 24 requests and, therefore, violated the Act.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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.

[5] The Clerk's website confirms that regular business hours for the office are Monday – Friday, 8:00 a.m. – 4:00 p.m. *See* Estill County Clerk – Estill County Kentucky.

Russell Coleman
Attorney General

/s/ Michelle D. Harrison
Michelle D. Harrison
Assistant Attorney General

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Distributed to:

Amber McClellan, Appellant
Donnie Watson, Estill County Judge/Executive
Jason Riley, Estill County Attorney
Kimberly Charles, Estill County Clerk