



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITOL AVENUE
FRANKFORT, KY 40601
(502) 696-5300
FAX: (502) 564-2894

20-ORD-014

February 4, 2020

In re: Glenn Hayden/Graves County Board of Elections

Summary: Graves County Board of Elections (“the Board”) violated the Open Records Act (“the Act”) by failing to issue a complete and timely disposition of a request for records.

Open Records Decision

The question presented in this appeal is whether the Board violated the Act in the disposition of a November 4, 2019, request by Glenn Hayden (“Appellant”) for records relating to a public notice submitted by the Board for publication in the *Mayfield Messenger* regarding the examination of voting machines. For the reasons that follow, this Office finds that the Board violated the Act by failing to issue a timely disposition of Appellant’s request.

Appellant requested “a copy of the initial Ad” and a copy of “the Request for Procurement and/or Purchase Order – or BPA – or MOA/MOU for authorizing payment.” In addition, he asked for “signatures/information” as to the following questions: “Who initiated the writing of this ad? ... Who proof-read this ad for accuracy? ... Who signed off as the ‘Approving Official’ for publishing [the ad]?”

On November 7, 2019, Graves County Clerk Kimberly D. Gills, as Chair of the Board, issued a one-sentence response: “Per your open records request dated November 4, 2019[,] your request does not comply with Kentucky open records act under KRS chapter 61.” Appellant initiated this appeal on January 2, 2020.

On January 13, 2020, the clerk responded to the appeal, stating that she had “supplied to Mr. Hayden the records that [she] could determine were requested,” which consisted of “a copy of the advertisement.” She characterized the majority of the request as seeking “information under the guise of an official open records request.” As for the other documents listed by Appellant, she stated that Appellant was merely “informing the county election board of procedures that he believes should have taken place and policies he believes should be enacted, and therefore those documents should exist, and not requesting specific records or docume[n]ts.”

To make a request under the Act requires a “[w]ritten application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected.” KRS 61.872(2)(a). Since Appellant’s request complied with the statute, the Board could not require more and simply reject the request.

Inasmuch as the Board, at some point, provided Appellant a copy of the advertisement, this appeal is moot as to that document. 18-ORD-110. As to the three questions posed in Appellant’s request, the Act does not require public agencies to honor requests for information, but only requests for records. KRS 61.872; 16-ORD-068.

With regard to the remainder of the request, the clerk implies, without stating explicitly, that the “Request for Procurement,” “Purchase Order,” “BPA,” or “MOA/MOU” is a nonexistent record that Appellant merely “believes ... should exist.” A public agency cannot afford a requester access to a record that it does not have or that does not exist. 99-ORD-98. Nevertheless, if the record does not exist, it is “incumbent on the [agency] to so state in clear and direct terms.” 01-ORD-38. Therefore, if any such record exists, it must be provided. 17-ORD-247.

Having received a valid request, the Board was obligated to issue, within three business days, a written response stating whether it would provide the requested records and, if not, “the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). The Board failed to explain the nonexistence of records, if they do not in fact exist, and failed to explain that requests for information need

not be honored. It simply rejected Appellant's request with a single sentence. The Board therefore violated the Act.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General should be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceedings.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

#5

Distributed to:

Mr. Glenn S. Hayden
Kimberly D. Gills, Clerk
John Cunningham, Esq.