



COMMONWEALTH OF KENTUCKY  
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20-ORD-052

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In re: Glenn Hayden/City of Mayfield

**Summary:** City of Mayfield ("City") violated the Open Records Act ("the Act") by denying an open records request it received by e-mail because the City's rules and regulations, adopted under KRS 61.876(1)(d), placed no restrictions on the method of delivery.

***Open Records Decision***

The City violated the Act by denying a January 26, 2020, request by Glenn Hayden ("Appellant") for "records ... verifying the payment for Annexation taxes to the city of Mayfield from Graves County Board of Education/School Board for the period beginning January 1, 2016[,] through December 31, 2017." The City improperly denied the request on January 27, 2020, on the basis that Appellant delivered the request by e-mail.

The City's response stated that "requests have to be either in person or by mail. We have to have an original signature." On January 28, 2020, Appellant initiated this appeal, asserting that he had complied with KRS 61.872 and should have been granted access to the records.

KRS 61.872(2), recently amended in 2019, provides that "[a]ny person shall have the right to inspect public records. The official custodian may require:"

- (a) Written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The written application shall be hand delivered, mailed, or sent via facsimile to the public agency;
- (b) Facsimile transmission of the written application described in paragraph (a) of this subsection; or
- (c) E-mail of the application described in paragraph (a) of this subsection.

KRS 61.872(2). Through its introductory clause, KRS 61.872(2) expressly grants each agency's records custodian the discretion to require a written application, and the choice to determine whether such application shall be "hand delivered, mailed, or sent via facsimile," faxed or e-mailed. *Id.* Thus, a public agency may choose the means by which it will accept a written application for open records. *Id.* The Act also requires, however, that the "procedures to be followed in requesting public records" be stated in "rules and regulations" adopted in "conformity with the provisions of KRS 61.870 to 61.884." KRS 61.876(1).

On appeal, the City furnished a copy of its "procedures," which provide:

Applications to inspect public records must be in written form describing the records to be inspected or copied and directed to the attention of the City Clerk. The following requests for public records are exempt from the written application and information regarding these records may be obtained via telephone or in person:

- A. Information contained within the Tax Roll
- B. Verification of payment or non-payment of property taxes

Subject to two exceptions, the City's procedures require that open records requests seeking City records must be in writing. The rule does not describe, however, any further "procedure" for a member of the public to make such requests. Thus, as of the time of Appellant's request, the City had not adopted any specific procedure regarding how the City receives such requests and upon which to validly deny

Appellant's request under the Act.<sup>1</sup> For this reason, the City violated the Act in denying, without sufficient basis, Appellant's open records request.

The City violated the Act for another reason: it added a requirement not found in the Act. And neither the City nor this Office is at liberty to add or subtract from the Act's provisions. *See Beckham v. Bd. of Ed. Of Jefferson County*, 873 S.W.2d 575, 577 (Ky. 1994). The Act provides no requirement for "an original signature." *See* KRS 61.872(2). It merely requires that the application be "signed by the applicant." *Id.* Moreover, the Act expressly envisions that a signature may not be original because a member of the public may elect to deliver his or her request "via facsimile." KRS 61.872(2)(a), (b). Regardless, the Act contains no "original signature" requirement, and the City is not at liberty to add such requirement found nowhere in the text of KRS 61.872. *Beckham*, 873 S.W.2d at 577. This Office's conclusion is further bolstered by KRS 369.107(1), which provides that "[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form." *See also* KRS 369.102(8).<sup>2</sup>

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 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.

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<sup>1</sup> In its response to this appeal, the City stated that it was in the process of revising its rules and regulations "to allow for electronic requests." To be clear, a public agency may choose the method of delivery through which it will accept an open records request – whether under subsection (a), (b), or (c). But to do so, and to comply with the Act, its rules and regulations must state the "procedures to be followed in requesting public records." *See* KRS 61.876. Regardless, the City did not elect a specific method for making written requests as of the date of Appellant's request. The City, therefore, did not exclude e-mail as an acceptable means of making an open records request.

<sup>2</sup> Similarly, an agency that requires a written application under subsection (a) is not at liberty to subtract from the Act by not accepting requests "sent via facsimile to the public agency" unless it requires only "[e]-mail of the application described in paragraph (a)." KRS 61.872(2).

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