



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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**20-ORD-087**

June 17, 2020

In re: Noel Mark Botts/Mercer County Property Valuation Administrator

*Summary:* Mercer County Property Valuation Administrator (“PVA”) subverted the intent of the Open Records Act (“the Act”) within the meaning of KRS 61.880(4) by assessing an excessive fee for a noncommercial request.

*Open Records Decision*

On May 1, 2020, Noel Mark Botts (“Appellant”) sent an open records request to the PVA for a copy of a certain property card. The PVA provided the card, consisting of one page, but attached an invoice for \$6.00, allocated as \$1.00 for “Property Card – Color” and \$5.00 for “Request for Ownership and/or Administrative Information.”

Appellant initiated this appeal, claiming that the \$6.00 fee was excessive because his request was “for the purposes of a real property assessment, not a commercial purpose.” In response to the appeal, the PVA states that the invoice was sent “in error,” and therefore “respectfully withdraws the request for payment.”

“If a person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees,” that person may file an appeal with this Office. KRS 61.880(4). KRS 61.880(4) does not require an *intent* to subvert the Act – only that the agency’s actions have subverted the intent of the Act. *Compare* KRS 61.880(4) *with* KRS

61.882(5) (authorizing an award of attorneys' fees and costs for "willfully" withholding records in violation of the Act). It is undisputed that Appellant's request was not for commercial or business purposes. For a noncommercial request, the PVA is limited to the fee provided by KRS 61.874(3), "which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required." Thus, the \$6.00 was excessive.

Even though the PVA provided the document along with the invoice, the imposition of that fee required the Appellant to bring this appeal - which is contrary to the Act's stated purpose of "free and open examination of public records." KRS 61.871. It is the imposition of the fee - not its collection - that constitutes the subversion. While this Office appreciates that the fee was assessed in error, the imposition of an excessive fee subverted the intent of the Act within the meaning of KRS 61.880(4).

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.

Daniel Cameron  
Attorney General

/s/ James M. Herrick

James M. Herrick  
Assistant Attorney General

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Distributed to:

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