



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-002

January 8, 2021

In re: Glen Davis/Scott County Sheriff's Department

Summary: The Scott County Sheriff's Department ("Department") violated the Open Records Act ("the Act") when it failed to carry its burden that it charged a reasonable copying fee for records.

Open Records Decision

Glen Davis ("Appellant") submitted a request to the Department to obtain copies of all records associated with his arrest in 2013. In a timely response, the Department produced ten pages of records. The Department also advised Appellant that other public agencies may possess additional records. Appellant then initiated this appeal. On appeal, he claims that the Department should have produced more than ten pages of records. He also claims that he provided the Department with twenty dollars in advance to pay for copying costs and the Department kept the full amount despite producing only ten pages. He therefore requests a refund of the excessive copying fee.

Although the Appellant believes that the Department should have produced more records than it did, this Office has consistently found that it is unable to adjudicate such competing claims. *See, e.g.,* 16-ORD-251; 16-ORD-081; 12-ORD-065. The Office must do the same here. The Department provided Appellant with ten pages of records responsive to his request. This Office is unable to determine whether the Department should have produced additional records.

Therefore, this Office is unable to find that the Department violated the Act in this regard.

Appellant also claims that the Department charged an excessive copying fee. Under KRS 61.874(3), a “public agency may prescribe a reasonable fee for making copies of nonexempt public records . . . which shall not exceed the actual cost of reproduction[.]” A public agency may request payment of the fee in advance of mailing copies. KRS 61.872(3)(b). Generally, ten cents per page is a reasonable fee. *Friend v. Rees*, 696 S.W.2d 325 (Ky. App. 1985). However, a public agency may impose a higher fee if it can substantiate that its actual cost to produce the records exceeds ten cents per page. *See, e.g.*, 99-ORD-069 (finding that a public agency substantiated its prior practice of charging twenty-five cents per page based upon its costs associated with a specific printer).

Here, Appellant sent the Department a twenty dollar check with his request. According to the Appellant, the Department cashed the check, but failed to refund the balance to him.¹ In that case, the Department has effectively charged two dollars per page—twenty times what is considered a reasonable fee. But the Department has not responded to this appeal to say otherwise. That is unfortunate because, under KRS 61.880(2)(c), the Department carries the burden of proof in justifying its disposition of a request to inspect records. Based on the record before it, this Office finds that the Department violated the Act in charging an excessive fee of two dollars per page.²

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 proceeding.

¹ Appellant has provided a copy of a receipt executed by the Department. The receipt documents that the Department charged twenty dollars as copying costs in responding to Appellant’s request. The receipt does not indicate that any balance was returned to Appellant.

² The Attorney General has no authority to order the Department to refund to Appellant any remaining balance that he may be owed.

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Distributed to:

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