



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

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

21-ORD-009

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In re: Stephen McBride/Monroe County Clerk

Summary: The Monroe County Clerk violated the Open Records Act (“Act”) when it did not issue a written response to a request to inspect records within the statutory time for doing so.

Open Records Decision

On November 23, 2020, Stephen McBride (“Appellant”) emailed the Monroe County Clerk and requested copies of any records concerning the ownership, possession, transfer, or taxation of certain firearms. The Appellant also sought a copy of any ordinance or policy that the Monroe County Fiscal Court has enacted related to firearms. The Clerk directed the Appellant to contact the Monroe County Judge/Executive. The Appellant immediately resubmitted his request to the Judge/Executive. However, after receiving no response by December 17, 2020, the Appellant initiated this appeal.

Normally, a public agency must respond to an open records request within three business days. KRS 61.880(1). To address the novel coronavirus public health emergency, however, the General Assembly modified that requirement when it enacted Senate Bill 150 (“SB 150”), which became law on March 30, 2020, following the Governor’s signature. SB 150 provides, notwithstanding the provisions of the Act, “a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt.” SB 150 § 1(8)(a). Under KRS 446.030(1)(a), the computation of a statutory time period does not exclude weekends unless “the period of time prescribed or allowed is less than seven (7)

days.” Accordingly, under SB 150, a public agency must respond to a records request within ten calendar days.

On appeal, the Monroe County Clerk claims that she had responded to the Appellant’s request and stated that the Clerk’s Office did not possess any records responsive to the Appellant’s request. The Clerk, however, did not provide a copy of that response or state when the response was issued. The Appellant claims, however, that he received no response from the Clerk’s Office by December 17, 2020. The Clerk does not provide proof that the response was issued within the ten days required by statute. Accordingly, the Monroe County Clerk violated the Act when it failed to issue a written response within ten days.¹

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/Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:
Stephen McBride
Teresa Sheffield

¹ On appeal, the Clerk claims to have no records responsive to the Appellant’s request. Once an agency affirmatively states that it has no responsive records, the burden then shifts to the requester to present a *prima facie* case that the requested records should exist in the agency’s possession. See *Bowling v. Lexington-Fayette Urban County Government*, 172 S.W.3d 333, 341 (Ky. 2005). The Appellant has made no *prima facie* showing that the Clerk’s Office should possess records related to firearm ownership or transfers.