



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-032

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In re: Lawrence Trageser/City of Simpsonville

Summary: The City of Simpsonville (“City”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), when it charged an excessive fee that did not match the City’s actual costs, as required by KRS 61.874(3).

Open Records Decision

Lawrence Trageser (“Appellant”) requested a copy of an investigation report completed by the Simpsonville Police Department, including certain body camera footage. The City provided the footage on a compact disc (“CD”) and charged the Appellant a \$10 fee. Claiming that the City’s fee for the CD was excessive, the Appellant launched this appeal.

Under KRS 61.880(4), a person requesting records may appeal to the Attorney General if he believes “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.” The Act provides that a “public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes 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.” KRS 61.874(3).

In an appeal like this, the burden is on the public agency to sustain its actions. KRS 61.880(2)(c). To carry its burden here and to substantiate the \$10 it charged the Appellant, the City must present proof of the “actual cost of reproduction, including the costs of the media.” Yet the City provides no evidence that a single blank CD costs \$10. *See, e.g.*, 13-ORD-147 (finding a \$10 fee for a CD to be excessive). Instead, the City claims that the Appellant has paid the fee and has therefore waived any claim that the fee was excessive. But the Act prohibits “the imposition of excessive fees.” *See* KRS 61.880(4). And there is no requirement that one forgo the prompt delivery of the requested records to seek relief from this Office. The City has failed to demonstrate that its actual cost to produce a CD amounted to \$10. KRS 61.874(3). Thus, this Office finds that the City subverted the intent of 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 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.

Daniel Cameron
Attorney General

/s/ James M. Herrick

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Assistant Attorney General

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Distributed to:

Mr. Lawrence Trageser
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