



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-116

June 23, 2021

In re: Stephen McBride/Montgomery County Clerk

Summary: The Montgomery County Clerk (the “Clerk”) did not violate the Open Records Act (the “Act”) in failing to respond to a request it allegedly never received.

Open Records Decision

On May 6, 2021, Stephen McBride (“Appellant”) sent a request via facsimile to the Montgomery County Clerk seeking records related to the “ownership, possession, carrying, storage, transportation, manufacture, sale, purchase, taxation, or transfer of firearms.” After receiving no response, the Appellant filed this appeal.

On appeal, the Clerk claims to have never received the Appellant’s request. An agency’s obligations under the Act arise only after its receipt of a request to inspect records. KRS 61.880(1). Although the Appellant provides a facsimile report showing the successful transmission of his request, the Clerk provides an activity report from its fax machine showing no such receipt of the request. This Office cannot resolve factual disputes regarding delivery and receipt of an open records request, and therefore this Office is unable to conclude that the Clerk violated the Act by failing to respond to Appellant’s request. *See, e.g.*, 21-ORD-023; 20-ORD-134; 18-ORD-056; OAG 89-81.¹

¹ On appeal, the Clerk also claims that it is the agency’s policy to not accept requests to inspect records by facsimile or email. It is not clear whether such policy is in writing. *See* KRS 61.872(2); KRS 61.876. Because the Clerk presented adequate proof that he did not receive the

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
Chris Cockrell, Montgomery County Clerk
Kevin Cockrell, Montgomery County Attorney

Appellant's request, this Office finds no violation. However, as mentioned in 21-ORD-101, the 2021 General Assembly passed House Bill 312, which takes effect on June 29, 2021. By that day, all public agencies must update their policies and procedures to include the email address of the agency's records custodian, and the records custodian may not deny a request because it was transmitted by email to the custodian's email address.