



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-170

September 13, 2021

In re: Glenn Hayden/Graves County Clerk

Summary: The Graves County Clerk (the “Clerk”) violated the Open Records Act (“the Act”) when its response to a request to inspect records failed to cite an applicable exemption in support of its denial, as required under KRS 61.880(1).

Open Records Decision

Glenn Hayden (“Appellant”) asked the Clerk for “record(s) [and] names of all registered voters residing” at a specific address. In a timely response, the Clerk stated that she could not “reply to [the Appellant’s] open records request at this time” because she was “waiting for the Attorney General’s Opinion on this matter” and that “when [she] receive[d] [her] answer [she would] respond to [the Appellant’s] request.” The Appellant then appealed.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” If an agency denies in whole or in part the inspection of any record its response must include “a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1).

Although the Clerk issued a response within five business days, the reason she provided for denying the request was that she was “waiting for the Attorney General’s Opinion on this matter” and that when she received her

answer she would respond to the Appellant's request.¹ The Clerk did not explain what matter she was referring to, or how a pending appeal to this Office regarding a similar issue authorized her to deny the Appellant's request. Simply put, a public agency may not deny a request to inspect records because the public agency is a party to a different appeal pending before this Office. Because the Clerk's response failed to identify an exception to the Act as the basis for its denial, the Clerk violated the Act.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 proceedings.

Daniel Cameron
Attorney General

/s/Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Glenn Hayden
Kimberly D. Gills

¹ The Opinion to which the Clerk is likely referring is 21-ORD-166, in which this Office found that the Clerk did not violate the Act when she declined to honor a request for information. That decision also noted, however, that if the requester had specifically sought voter registration records, then the Clerk would face a high burden in proving that KRS 61.878(1)(a) applied to deny inspection of such voter registration records.

² The Appellant also alleges the Clerk violated Kentucky voter registration laws. However, the Appellant's allegations are outside the scope of the Act, and this Office declines to address such allegations in this forum.