



COMMONWEALTH OF KENTUCKY
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21-ORD-184

October 4, 2021

In re: Lynette Warner/Graves County School Board

Summary: The Graves County School Board (the “Board”) violated the Open Records Act (“the Act”) when it did not respond to a request to inspect records.

Open Records Decision

On August 20, 2021, Lynette Warner (“Appellant”) sent an email to the Board Chair in which she invoked the Act and sought “to obtain the date” on which the Board “voted to amend the School Opening Plan 2021-2022 to include [that] masks be worn by students and staff and the times” that the masks were required to be worn. Having received no response, on August 31, 2021 this appeal followed.

When a public agency receives a request under the Act, it must “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.” KRS 61.880(1). The Board did not respond to the Appellant’s request until September 8, 2021, after the appeal was initiated. On appeal, the Board claims that, due to a technical error in syncing the Board Chair’s electronic devices, she did not see the Appellant’s email on her phone. The Board therefore argues that it never received the Appellant’s request and that she should have submitted her request to the Board’s records custodian instead of the Chair.¹

¹ Under KRS 61.872(4), if “the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.” Thus, the Board Chair was still required to either notify the Appellant of the record custodian’s

Although the Board claims that its Chair looked at the wrong device, and therefore did not see the request, it has not established that the Board Chair did not receive the email. Therefore, the Board violated the Act when it did not respond to the Appellant's request within five business days.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:

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name and location or forward the Appellant's request to the records custodian. *See, e.g.*, 19-ORD-132; 03-ORD-032.

² On September 2, 2021, the Appellant sent a similar request to the Board Chair, although her new request sought the actual records documenting the Board's vote as opposed to her original request for information, *i.e.*, "the date" on which the vote occurred. In response to this new request, which is not the subject of this appeal, the Board properly forwarded the request to its records custodian under KRS 61.872(4). The records custodian explained that the August meeting minutes documenting the vote would be available after the Board's next meeting in September where it will vote to approve the minutes. *See* KRS 61.835.