



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-212

November 9, 2021

In re: Joseph Spiaggi/Jefferson County Property Valuation Administrator

Summary: The Jefferson County Property Valuation Administrator (“the PVA”) subverted the intent of the Open Records Act (“the Act”) within the meaning of KRS 61.880(4) when it assessed an excessive fee for a noncommercial request to inspect public records. The PVA did not violate the Act when it subsequently provided copies of the records without charge.

Open Records Decision

On October 6, 2021, Joseph Spiaggi (“Appellant”) submitted a request to the PVA to inspect residential property records for eleven specific addresses. He indicated that his request was not for a commercial purpose. In a timely response, the PVA stated that the Appellant would be charged a fee of \$94.00 pursuant to “the fee schedule set in place by the Kentucky Department of Revenue.” This appeal followed.

Under KRS 61.880(4), “[i]f a person feels 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,” that person may appeal to this Office. KRS 133.047(4)(b) authorizes the Department of Revenue to prescribe a PVA fee schedule, but only for “persons seeking information to be used for commercial or business purposes.” For a noncommercial request, the PVA is limited to the copying fee permitted under KRS 61.874(3), “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.” Here, it is undisputed that the Appellant’s request

was not for commercial or business purposes. Therefore, the PVA improperly assessed fees under the commercial fee schedule.¹

After this appeal was initiated, the PVA provided the Appellant with copies of the requested records free of charge. Nevertheless, the PVA's initial imposition of the commercial use fee required the Appellant to bring this appeal. While this Office appreciates that the fee was assessed in error, the imposition of an excessive fee subverted the intent of the Act within the meaning of KRS 61.880(4). *See* 20-ORD-087.

On appeal, the Appellant alleges that he did not receive all of the records he requested. First, he claims that one of the property records he received was illegible. However, this deficiency is not apparent from the copy he provided to this Office. Second, the Appellant claims that records were missing for one of the addresses he requested, while the PVA asserts that the specified address does not exist. This Office is not capable of resolving a factual dispute of this nature. *See, e.g.*, 19-ORD-083. The PVA asserts that it has provided all responsive records in its possession. Once a public agency states affirmatively that it has provided all responsive records, the burden shifts to the requester to present a *prima facie* case that additional records exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not made a *prima facie* case that any additional responsive records exist or should exist. Therefore, the PVA did not violate the Act by withholding records.

The Appellant further argues that the PVA violated the Act by providing him with copies of the records when he had requested inspection on the premises. Under KRS 61.872(2)(a), “[a]ny resident of the Commonwealth shall have the right to inspect public records.” Furthermore, “suitable facilities shall be made available by each public agency for the exercise of this right.” KRS 61.872(1). This Office has recognized that “subject to the provision that the agency may adopt rules and regulations . . . to provide full access to public records, to protect public records from damage and disorganization, and to prevent excessive disruption of [the agency’s] essential functions, the decision whether to conduct an on-site inspection of the records rests with [the requester].” *See* 97-ORD-12 (citing KRS 61.876(1)). This Office has further

¹ Moreover, the Appellant requested inspection of records, not copies. Accordingly, the imposition of any copying fee was improper. This Office has long recognized that a public agency may not “assess the requester *any* charge for exercising the clearly defined right to inspect public records.” *See, e.g.*, 97-ORD-8 (emphasis in original); 07-ORD-013.

stated that “[u]nreasonable restrictions upon inspection may not be imposed.”
See OAG 89-81.

Here, however, the Appellant has not shown that he was denied the right of onsite inspection. The PVA notified the Appellant that copies of the records were available for him to pick up at the PVA office, and the Appellant did so. The Appellant does not allege that he was forbidden to remain on the premises to inspect those copies.

Finally, the Appellant asserts that the PVA is “not in compliance with KRS 61.876,” a provision that requires public agencies to adopt rules and regulations concerning access to public records and to display those rules and regulations in a prominent location accessible to the public. However, the Appellant does not explain in what way the PVA has allegedly failed to comply with that statute. Accordingly, this Office finds no basis to conclude that the PVA violated KRS 61.876.

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 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

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