



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**22-ORD-149**

July 12, 2022

In re: Lawrence Trageser/Bullitt County Sheriff's Office

**Summary:** The Bullitt County Sheriff's Office (the "Sheriff's Office") did not violate the Open Records Act ("the Act") when it imposed a fee that represented its actual cost to reproduce requested records.

***Open Records Decision***

Lawrence Trageser ("Appellant") submitted a request to the Sheriff's Office for two categories of records related to a specific employee. The Appellant asked that the "records be returned via e-mail . . . in a PDF or similar format." He added that "[i]f this is not possible, [he] invokes KRS 61.872(3) upon agencies [sic] response." In a timely response, the Sheriff's Office granted the Appellant's request, but imposed a \$13.00 fee to reproduce the records.<sup>1</sup> The Sheriff's Office stated its "email system will not allow huge files to be transmitted via email." For that reason, the Sheriff's Office offered to provide the responsive records "on a thumb drive." The Sheriff's Office stated it would mail the responsive records upon payment of \$10.00 for the thumb drive and \$3.00 for postage and handling. The Appellant then initiated this appeal, and claims that the Sheriff's Office subverted the Act by charging an excessive fee.

---

<sup>1</sup> The Sheriff's Office claims that it has redacted the records where possible or withheld records if redactions were not possible under KRS 61.878(1)(a) and KRS 61.878(1)(h). The Appellant did not challenge these claims in his appeal and only challenges the reproduction fees the Sheriff's Office imposed.

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.” Under KRS 61.874(3), a “public agency may prescribe a reasonable fee for making copies of nonexempt public records requested . . . which shall not exceed the actual cost of reproduction, including the costs of the media . . . incurred by the public agency, but not including the cost of staff required.”

This Office has historically found that a public agency subverts the intent of the Act when it imposes a fee that exceeds the agency’s actual cost to reproduce requested records. *See, e.g.*, 21-ORD-243; 10-ORD-022 (public agency imposed a \$5.00 reproduction fee even though its actual cost of reproduction was \$0.40 for the blank CD that the agency used). The burden is on the public agency to sustain its actions. *See* KRS 61.880(2)(c).

To sustain its actions, the Sheriff’s Office submits a receipt from Amazon that shows the Sheriff’s Office was charged \$18.95 for a package of two thumb drives. The Sheriff’s Office then charged the Appellant \$10.00, which did not exceed the actual cost of each thumb drive.<sup>2</sup> The Sheriff’s Office further explains that the \$3.00 postage and handling fee it imposed represents \$1.75 for postage as well as the cost of a “padded envelope to prevent damage to the thumb drive.”<sup>3</sup> Accordingly, the Sheriff’s Office did not charge an excessive fee.<sup>4</sup>

---

<sup>2</sup> The receipt from Amazon that the Sheriff’s Office provides does not show that sales tax or shipping costs were charged for the thumb drives. Although the Office will not presume that the Sheriff’s Office was charged for shipment of the package, because shipping costs fluctuate and may be waived, the Office will presume that sales tax was charged. *See* KRS 139.200 (imposing a tax of 6% on all tangible property sold and delivered in the Commonwealth). When the 6% rate of sales tax is added to the \$18.95 cost of the package, the total amount for the package of two thumb drives is \$20.08, or \$10.04 per thumb drive.

<sup>3</sup> The Sheriff’s Office did not submit a receipt for the padded envelope or a postage rate schedule. However, the Sheriff’s Office has offered to waive postage costs if the Appellant picks up the thumb drive from the Sheriff’s Office.

<sup>4</sup> The Appellant argues that many state agencies will use cloud storage services, such as Dropbox or One Drive, to provide responsive records when the size of the file is too large to deliver by email. While this method may be an acceptable method of delivery when the parties agree, the Act does not require a public agency to deliver electronic records through cloud storage. In fact, the only two methods by which a resident of the Commonwealth has the right to demand inspection are by receiving physical copies of records in the mail or by inspecting records in person at the agency’s suitable facilities. *See* KRS 61.872(3). The Sheriff’s Office could have mailed physical copies of the records to the Appellant at 10 cents per page, which would have exceeded the \$10.00 he was charged. The Sheriff’s Office incurred \$10.04 in expenses to reproduce the requested records, and the fee it charged did not exceed that amount.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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 emailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
**Attorney General**

s/Matthew Ray  
Matthew Ray  
Assistant Attorney General

#215

Distributed to:

Lawrence Trageser  
Mary Allen  
Walt Sholar  
Robert Flaherty