



COMMONWEALTH OF KENTUCKY
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22-ORD-219

October 20, 2022

In re: Bridgette Ehly/Oldham County Clerk

Summary: The Oldham County Clerk (“the Clerk”) did not violate the Open Records Act (“the Act”) when she did not provide electronic copies of the voter signature rolls from the May 2022 primary election because the Clerk does not maintain the records in electronic format.

Open Records Decision

On May 23, 2022, Bridgette Ehly (“the Appellant”) submitted a request to the Clerk seeking a “copy of the signature rosters for the 2022 primary election” for 25 precincts in Oldham County. The Appellant further requested the records be emailed to her. In a timely response, the Clerk stated she did not possess a responsive record “in the form” the Appellant requested. However, the Clerk did possess hard copies of the signature roles and offered to make those responsive records available at \$0.50 per page. The Appellant then responded to the Clerk and advised that “other” county clerks had been providing the requested records in electronic format, and that the Clerk could allegedly obtain a copy of the signature roles in PDF file format from Tenex.¹ The Clerk stated she was unaware of any county clerk providing electronic copies of the signature roles and continued to offer the Appellant hard copies of the signature roles at \$0.50 per page.

On June 22, 2022, the Appellant sent a second request in which she sought an electronic copy, in CSV format, of the voter signature rolls from the May 2022 primary election. Specifically, the Appellant asked the Clerk to provide a file from Tenex. She described the file as a Microsoft Excel spreadsheet containing approximately 80 columns. In a timely response, the Clerk stated she did not have a copy of that file

¹ Tenex is a private company that provides electronic election equipment and services.

and that the requested file was not one the Clerk used as part of the election process in Oldham County. This appeal followed.

On appeal, the Clerk claims she does not possess any electronic copies of the requested record. Tenex created and continues to possess the electronic file. As this Office has routinely recognized, the Act “does not impose an obligation on agencies to create, procure, or retrieve a record to accommodate a request.” 18-ORD-221; 12-ORD-098; 99-ORD-202. In these decisions, the Office found that the Act did not require public agencies to ask private companies to provide physical copies of records they had generated and which were not already in the possession of the agency. Nothing in the Act suggests electronic records should be treated differently in this regard.

The Clerk claims to have little to no control over the electronic file format of the signature rolls. And this Office has routinely stated that it cannot resolve factual disputes between parties in this forum. *See, e.g.*, 19-ORD-083; 03-ORD-061; OAG 89-81. Instead, the Clerk has offered the Appellant records responsive to her request in the standard hard copy format.² Moreover, county clerks may charge \$0.50 per page to provide records in hard copy format. *See* KRS 64.019(2)(b). Accordingly, the Clerk did not violate the Act when she did not provide an electronic copy of the requested record.

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/ Marc Manley
Marc Manley
Assistant Attorney General

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² It is not clear from this record how the Clerk has physical copies of the responsive records but not a PDF copy. If the Clerk has printed the signature roles from a PDF file in her possession, then the Clerk must provide the Appellant a copy of the PDF file in electronic form.

Bridgette Ehly
Amy B. Alvey
John Carter