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24-ORD-176

August 5, 2024

In re: Adam Brien/Calvert City Clerk

**Summary:** The Calvert City Clerk (“the Clerk”) did not violate the Open Records Act (“the Act”) when it denied a request seeking information without describing any public records to be inspected.

***Open Records Decision***

On June 21, 2024, Adam Brien (“Appellant”) submitted a request to the Clerk which, referring to a specific incident, asked, “why the proper steps laid out clearly in state law were not followed?” Subsequently, on July 4, 2024, the Appellant emailed the clerk to “clarify his request.” In response, on July 5, 2024, the Clerk stated, she is “in receipt of your emails and will address accordingly.” On July 5, this appeal followed.<sup>1</sup>

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.” Here, the Clerk received the Appellant’s original request on June 21, 2024, but did not respond

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<sup>1</sup> The Appellant’s July 4 “clarification” stated that he sought “any correspondence between any city official concerning investigating [his] numerous verbal and written complaints regarding” a specific officer’s actions related to Narcan usage. Although the Appellant describes his July 4 correspondence as a “clarification,” it is a new request. The Office lacks jurisdiction to consider the July 4 request on appeal because the Appellant has not provided a copy of the agency’s written denial. *See* KRS 61.880(2)(a). Instead, he provides the agency’s statement that the request will be “address[ed] accordingly.” *See* 20-ORD-175 (finding that an agency’s preliminary correspondence that does not deny a request to inspect records is not a denial within the meaning of KRS 61.880 until the statutory deadline to respond has expired). Here, the Appellant submitted his new request on July 4 and initiated this appeal on July 5, before the agency’s statutory deadline to respond to that request had expired.

to it until July 5, 2024. Thus, the Clerk violated the Act when it failed to timely respond to the Appellant's request.

On appeal, the Clerk states that, other than the July 4 email, "no request for specific documents was made." Rather, the Appellant submitted a "request for information." The Appellant's request asked the Clerk "why the proper steps laid out clearly in state law were not followed?" This request did not describe public records to be inspected, but rather, sought information. *See, e.g.*, 23-ORD-257 (denying a request for "the full names" of correctional officers on duty at a specific time); 22-ORD-054 (denying a request asking "who ordered" a letter to be written, how much the author was paid, and "why" the letter "was circulated"). The Act does not require public agencies to answer interrogatories or fulfill requests for information. Rather, it only requires public agencies to *produce public records* for inspection. *See* KRS 61.872(2)(a) (requiring a request to inspect records to include, *inter alia*, a description of "the records to be inspected"); *Dep't of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) ("The [Act] does not dictate that public agencies must gather and supply information not regularly kept as part of its records."). Accordingly, the Clerk did not violate the Act when it denied the Appellant's request, which did not describe any public records to be inspected.

A party aggrieved by this decision may appeal it by initiating an 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](mailto:OAGAppeals@ky.gov).

**Russell Coleman**  
**Attorney General**

/s/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

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Distributed to:

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