**18-ORD-166**

August 23, 2018

In re: Keith Philhower/Community Transitional Services, LLC

***Summary*:**  Community Transitional Services, LLC receives public funds only through a contract obtained through a competitive procurement process. Therefore, it was not a public agency and thus was not required to comply with the Open Records Act.

***Open Records Decision***

The question presented in this appeal is whether Community Transitional Services, LLC (“CTS”), violated the Open Records Act in the disposition of Roederer Correctional Complex inmate Keith Philhower’s request dated July 5, 2018, for copies of a “Jail Tracker Log,” which “shows all property sent to [him] through the mail while [he] was a resident at [CTS]…” For the reasons that follow, CTS did not violate the Act.

CTS is a private, limited liability company. 17-ORD-106. CTS operates a halfway house located in Louisville, Kentucky. The facility is described as a “re-entry center for parolees and inmates released to community custody.” *Id* (internal citation omitted).

On July 16, 2018, the Director of CTS, Barbara Strahm, responded to Philhower, stating “I am in receipt of your Open Records request. Per the General Counsel of the Department of Corrections, Community Transitional Services is not a public entity and is not subject to the Open Records Act.”

Philhower argues on appeal that CTS “is contracted with the Kentucky Department of Corrections to house State Prisoners, Probationers, and Parolees. No less than 25% of their yearly fiscal income comes from the Government to carry out their contract.” As such, he contends specifically that CTS is a public agency within the meaning of KRS 61.870(1)(h):

Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. *However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection.*

(emphasis added.)

CTS has not submitted a written response to Philhower’s appeal, but confirmed via-telephone on August 10, 2018, that it had previously provided a string of emails in which Ms. Strahm was advised on March 21, 2017, by Brenn O. Combs, General Counsel, Kentucky Department of Corrections that CTS is “not a ‘public agency’ s defined in KRS 61.8780.” This advice was premised upon information from William A. Knight III, State HWH Coordinator and State HNT Training Commander, Division of Probation and Parole, that the Department’s contracts with halfway houses are “obtained through a competitive procurement process” under KRS Chapter 45A.

Although it is possible that CTS might receive state and local funds from other contracts that are not competitively bid, the only information in the record is that its contract with the Department of Corrections was obtained through a competitive procurement process. Thus, there is no basis in the record upon which to conclude that CTS is a public agency within this definition or any other subsection of KRS 61.870(1). We must therefore conclude that it is not a public agency and is not required to comply with the provisions of the Open Records Act. 17-ORD-106; 12-ORD-222; 96-ORD-197.

A party aggrieved by this decision may appeal it by initiating an 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.

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