



COMMONWEALTH OF KENTUCKY  
**OFFICE OF THE ATTORNEY GENERAL**

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**20-ORD-012**

January 31, 2020

In re: Kim Vocke/Bromley Volunteer Fire Department

*Summary:* The Bromley Volunteer Fire Department ("BVFD") is a "public agency" as defined by KRS 61.870(1)(h), and violated the Open Records Act ("the Act") by denying access to existing nonexempt public records.

*Open Records Decision*

On October 8, 2019, R. Kim Vocke, Esq. ("Appellant") requested copies of "the minutes of all meetings of the Bromley Volunteer Fire Department ["BVFD"] for the past twelve months and also a copy of the list of all active crew members...for the past twelve months." On October 9, 2019, BVFD denied the request, stating, "BVFD is clearly registered with the Kentucky Secretary of State's office as a non-profit Kentucky corporation.... Thus, the BVFD does not meet the definition of a 'public agency' as defined in KRS 61.805, and therefore, not subject to comply with open records requests."

By email on October 18, 2019, Appellant referred BVFD to KRS 61.870(1)(h). BVFD replied, stating that it, "is undertaking an examination of its funds to determine the application of KRS 61.870(h). If it is determined that it meets the 25% threshold, those requested records that fall within the statutory requirement will be made available." On November 5, 2019, after having received no further response, Appellant appealed to this Office.

On November 20, 2019, BVFD responded to the appeal, recognizing that the request implicated records from fiscal years 2018-2019 and 2019-2020. BVFD stated that its contract with the City of Bromley was terminated effective April 3, 2019, therefore, "the request that includes the time period within [fiscal year] 2019-2020 falls outside the contractual period." Regarding fiscal year 2018-2019, BVFD asked for additional time to "complete its financial analysis to determine if it meets the 25% threshold set up in [KRS 61.870(1)(h)]."

On November 21, 2019, this Office allowed BVFD additional time, "up to and including Friday, December 20, 2019." Pursuant to KRS 61.880(2)(c) and 40 KAR 1:030, Section 3, this Office requested from BVFD *any* records demonstrating its status as a "public agency" to substantiate its denials. This Office also asked that BVFD state any additional exemptions that may apply for withholding responsive records.

Although BVFD did not comply with this request,<sup>1</sup> Appellant did. On December 3, 2019, Appellant provided this Office and BVFD copies of 2017-2019 financial records from the City of Bromley, and BVFD's 2016-2019 financial disclosure forms to the Kentucky Fire Commission. The financial records show that the City of Bromley allocated public funds to BVFD during fiscal years 2016-2018, with an allocation of \$58,000 during fiscal year 2018-2019. The financial disclosures show that BVFD consistently reported the allocations from the City of Bromley, and estimated a 2018-2019 budget of \$62,000. Appellant stated that these records show BVFD, "has received substantially more than [25%] of its budget from Bromley funds which makes [BVFD] subject to open records requests pursuant to KRS 61.870(1)(h)."

On December 20, 2019, BVFD emailed this Office, stating, "after an examination of its financial records, [BVFD] now wishes to comply with the request," but it did not provide any evidence substantiating its prior denials. On January 6, 2020, Appellant contacted this Office stating that BVFD did not provide all of the requested records, and asked that this Office proceed with the appeal.

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<sup>1</sup> Rather than complying with this Office's request, BVFD tendered responsive documents to Appellant from October 2018 through March 2019. BVFD refused to provide responsive records requested covering the period between April 2019 and October 2019 and maintained it was not a "public agency" during this period.

The threshold issue here is whether the fire department is a public agency. The remaining questions will be governed by that determination. Sufficient evidence exists in the record for this Office to find that in fiscal year 2018-2019, BVFD met the definition of "public agency" because it received more than 25% of its funding from the City of Bromley. *See* KRS 61.870(1)(h). Thus, this Office finds that BVFD violated the Act when it denied Appellant access to the existing nonexempt responsive records created in that fiscal year.

KRS 61.870(1)(h) defines "public agency" to mean "[a]ny 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." Appellant provided records demonstrating that in fiscal year 2018-2019 BVFD received local authority funds in excess of 25% of its total expenditures. BVFD did not dispute the accuracy of the records or Appellant's characterization. Further, BVFD did not identify any exemptions that would apply to the responsive records. Accordingly, this Office finds that during fiscal year 2018-2019, BVFD was a "public agency" and subject to the requirements of the Act. In withholding responsive records without basis, BVFD violated the Act.

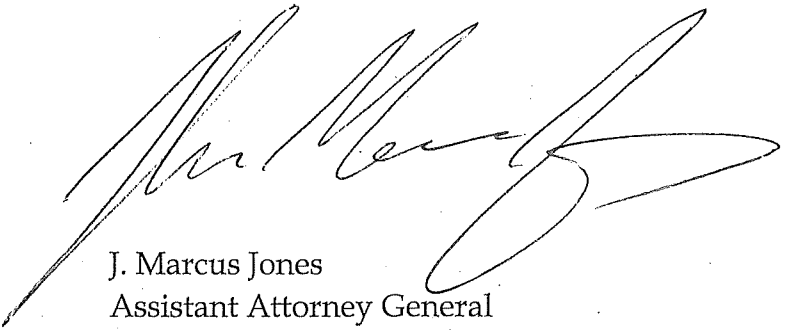
BVFD failed to produce any evidence for fiscal year 2019-2020. KRS 61.880(2) assigns the burden of proof to the agency resisting disclosure. Here, BVFD failed to comply with this Office's request for information supporting its assertion, under KRS 61.870(1)(h), that it did not receive more than 25% of funds from the City of Bromley in fiscal year 2019-2020. BVFD placed no evidence in the record, and did not dispute the evidence Appellant placed in the record. Accordingly, this Office finds that BVFD failed to meet its burden of proof in denying that it was a "public agency" in fiscal year 2019-2020. KRS 61.870(1)(h). Therefore, this Office must conclude that BVFD violated the Act in denying Appellant's access to nonexempt responsive records.

Either party aggrieved by this decision may appeal by initiating action in the appropriate circuit court per 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 proceeding.

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20-ORD-012

Page 4



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#449

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Bromley Volunteer Fire Department