



COMMONWEALTH OF KENTUCKY
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22-ORD-120

May 31, 2022

In re: Kurt Wallace/Oldham County Judge/Executive

Summary: The Oldham County Judge/Executive (“Judge/Executive”) did not violate the Open Records Act when he asked a requester to demonstrate how the requester qualified as a resident of the Commonwealth. However, the Judge/Executive did violate the Act when he asked the requester to provide additional “proof” of residency after the requester provided a P.O. Box address. The Judge/Executive’s policies and procedures conform to KRS 61.876 and are posted on the Oldham County Fiscal Court’s website.

Open Records Decision

On April 26, 2022, Kurt Wallace (“Appellant”) e-mailed the Judge/Executive and asked to inspect the oaths of office, and various insurance policies, of several local officials. The Appellant did not provide his address, and stated only that he was “a man in Kentucky.” In a timely response, the Judge/Executive informed the Appellant that his statement, that he was “a man in Kentucky,” was insufficient. The Judge/Executive then requested the Appellant to provide an address. The Appellant responded and claimed that he was not required to provide his address because he requested copies of the records to be sent by e-mail. Nevertheless, on April 28, the Appellant provided a P.O. Box number in Louisville.

A few days later, on May 1, the Appellant sent another request to the Judge/Executive seeking the same records that he asked for previously, as well

as a few new records related to the Oldham County Sheriff's Department and various court officials "concerning the topic of COVID or COVID Countermeasures." The next day, the Judge/Executive stated that he was not the official records custodian for several of the requested records, and that the Appellant would have to submit those portions of his request to the Sheriff's Department and the Administrative Office of the Courts.¹ However, the Judge/Executive claimed to possess some responsive records, and asked the Appellant to "[p]lease provide proof of residency." The Judge/Executive nevertheless stated that he expected to have the requested records "pertinent to [his] office available next week."²

On May 4, the official records custodian for the Judge/Executive e-mailed the Appellant and claimed to have received a request from the Appellant "by mail" on May 4.³ The official records custodian reiterated that the Appellant must submit his request for the Sheriff Department's records to the Sheriff, and his request for court records to the Administrative Office of the Courts. The official records custodian also asked the Appellant to complete the Standardized Open Records Request Form, promulgated by this Office. The official records custodian stated that the "records pertinent to the Oldham County Judge-Executive's office are being assembled and will be ready for delivery the week of May 9." This appeal followed.

On appeal, the Appellant raises only two issues subject to this Office's review. First, the Appellant objects to the Judge/Executive's request that he provide his address to prove his status as a resident of the Commonwealth.

¹ See KRS 61.872(4) ("If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.")

² The Appellant mistakenly believed that this statement indicated that the Judge/Executive would produce the records for inspection in-person at the Judge/Executive's office. The Judge/Executive explains on appeal that he intends to e-mail the records to the Appellant, and that this statement did not mean that the Appellant would be required to inspect the records in-person. Thus, to the extent the Appellant objects to being required to inspect the records in-person, that issue is moot. See 40 KAR 1:030 § 6.

³ The Appellant did not provide a copy of that mailed request on appeal, so it is unclear whether the Appellant provided some proof of residency in that request.

The Appellant also claims that the Judge/Executive's policies and procedures for submitting a request do not comply with KRS 61.876.⁴

During the 2021 Regular Session, the General Assembly enacted House Bill 312 ("2021 HB 312") which made a significant change to the Act. Effective June 29, 2021, "[a]ll public records shall be open for inspection by any *resident of the Commonwealth*" and "[a]ny *resident of the Commonwealth* shall have the right to inspect public records." KRS 61.872. The Act defines "resident of the Commonwealth" to include an individual residing in the Commonwealth, a domestic business entity, a foreign business entity registered with the Secretary of State, a person employed in the Commonwealth, a person or business that owns real property in the Commonwealth, or any person "that has been authorized to act on behalf of" one of these individuals. KRS 61.870(10). A "resident of the Commonwealth" also includes a "newsgathering organization" as defined in KRS 189.635(8)(b)1.a. to e. *Id.*

The official records custodian may require a person requesting to inspect records "to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f)." KRS 61.872(2)(a). Thus, although the official records custodian may require "a statement" from the applicant, KRS 61.872(2)(a) does not go so far as to allow the official records custodian to demand "proof" of an applicant's residential status. Significantly, the "statement" does not have to be certified or made under oath. Moreover, a person can qualify as a "resident of the Commonwealth" even if the person does not have a mailing address in Kentucky. For example, "an individual that is employed and works at a location or locations within the Commonwealth" qualifies as a "resident of the Commonwealth." KRS 61.870(10)(d).

KRS 61.872(2)(a) authorized the Judge/Executive to ask the Appellant to provide "a statement" that demonstrates the Appellant qualifies as a resident. The Judge/Executive, however, narrowed the Appellant's options of

⁴ The Appellant claims that the Judge/Executive is violating various provisions of the Kentucky constitution. However, the right to inspect records is a statutory right under KRS 61.872, and only "residents of the Commonwealth" possess this statutory right. The Office is unable to adjudicate the Appellant's claims of constitutional violations in an open records appeal conducted under KRS 61.880(2).

demonstrating his residential status by asking for the Appellant's address. In response, the Appellant provided the Judge/Executive with a P.O. Box address in Louisville. In doing so, the Appellant provided a "statement" that demonstrated his residential status. Moreover, on appeal, the Appellant claims that he "work[s] in Kentucky." Although these statements do not "prove" the Appellant's residential status, KRS 61.872(2)(a) does not require actual proof of residency. The official records custodian can do no more than ask for a "statement. . . of the manner in which the applicant is a resident of the Commonwealth." *Id.* The Judge/Executive therefore violated the Act when he demanded additional proof of the Appellant's residency beyond a mere statement in the application.

The Appellant also claims that the Judge/Executive has failed to promulgate rules and regulations that permit the submission of requests by e-mail to the Judge/Executive's official records custodian. Under KRS 61.876, every public agency must promulgate rules and regulations that contain, among other things, the "title, mailing address, and e-mail address of the official custodian of the public agency's records." KRS 61.876(1)(b). Moreover, each public agency must prominently display its rules and regulations, "including on its Web site." KRS 61.876(2).

Here, the Judge/Executive's website is the same website that is used for the Oldham County Fiscal Court. The Fiscal Court's rules and regulations are displayed on its website.⁵ A review of the Fiscal Court's rules and regulations show that the official records custodian has been identified, and both her e-mail address and her mailing address are provided. The rules and regulations also explain that requests may be submitted via e-mail to the official records custodian at the e-mail address provided. Accordingly, the Judge/Executive's rule and regulations (which are the Fiscal Court's rules and regulations) comply with KRS 61.876.⁶

⁵ See <https://www.oldhamcountky.gov/open-records-request> (last accessed May 24, 2022)

⁶ The Appellant also claims that the Oldham County Sheriff's Department's website does not contain the rules and regulations required under KRS 61.876. However, the Appellant appears to fault the Judge/Executive for the Sheriff's Department's website. The Appellant has not appealed the denial of an open records request submitted to the Sheriff's Department. Accordingly, any objection the Appellant has to the Sheriff Department's rules and regulations is not properly before this Office.

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/Marc Manley
Marc Manley
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Distributed to:

Kurt Wallace
David Voegele, Oldham County Judge/Executive