



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

22-ORD-164

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In re: Dawn Crawford/Madison County Judge Executive's Office

Summary: The Madison County Judge Executive's Office ("the Judge Executive's Office") violated the Open Records Act ("the Act") when it delayed access to records without notifying the requester of the earliest date on which records would be available or explaining the cause of delay. The Judge Executive's Office did not violate the Act when it did not provide records that do not exist or are not within its custody or control.

Open Records Decision

On April 14, 2022, Dawn Crawford ("Appellant") submitted a request to the Judge Executive's Office for 16 categories of "written contracts, employment records and policies and procedures" relating to the Madison County Detention Center ("the Detention Center"). The Judge Executive's Office received the request on April 15, 2022, and on April 21, 2022, notified the Appellant that "[d]ue to the number of items requested, and multiple departments having the items specified," it would take "some time to compile all of the documents." The Judge Executive's Office did not notify the Appellant when the records would be available. On May 2, 2022, the Judge Executive's Office notified the Appellant that 220 pages of responsive records were available, and explained that other categories of records either did not exist or were not within the custody or control of the Judge Executive's Office. This appeal followed.

The Appellant alleges that the Judge Executive's Office did not fulfill her request in a timely manner. A public agency has five business days to fulfill a request for public records or deny such a request and explain why. KRS 61.880(1). This time may be extended if the records are "in active use, in storage or not otherwise available," but the agency must give "a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record[s] will

be available for inspection.” KRS 61.872(5). Here, the Judge Executive’s Office responded within five business days, but it did not provide the records or deny the request and explain why. Instead, the Judge Executive’s Office stated that it would take “some time” to provide all of the records, but did not provide the Appellant the earliest date when they would be available. Nor did the Judge Executive’s Office give a detailed explanation for the cause of the delay, as required under KRS 61.872(5). *See, e.g.*, 17-ORD-194 (finding that a vague statement about the “nature and volume of the records” was not a “detailed explanation” under KRS 61.872(5)). Therefore, the Judge Executive’s Office violated the Act

The Appellant further claims that she did not receive all of the records in 11 of the 16 categories in her request. First, she asserts that she did not receive the contract with Kellwell Food Management (“Kellwell”) that was in effect between March 1 and July 1, 2017. The Appellant claims to have received only a contract for 2015-16. However, the Department explains that it did not execute a new contract with Kellwell. Instead, the old contract was renewed each year by mutual agreement, as reflected in the 2016-17 budget provided to the Appellant. Therefore, the Appellant did receive the contract with Kellwell that was in effect during the relevant time period.

Next, the Appellant complains that she cannot “verify” whether a policy relating to food service vendors is the one in effect during 2017 because the document does not contain an effective date. However, the Act gives a resident of the Commonwealth the right to inspect public records, not the right to demand such records contain certain content. Furthermore, the Judge Executive’s Office has confirmed that the document is the one the Appellant requested. “[Q]uestions relating to the verifiability, authenticity, or validity of records disclosed under the [Act] are not capable of resolution under the” Act. *See* 04-ORD-216 n.1. Thus, this Office cannot find that the Appellant did not receive the record she requested.

Next, the Appellant complains that she did not receive certain records that the Judge Executive Office’s claims it does not possess or that certain records she did receive did not contain the information she expected to find in the records. As to the Appellant’s first concern—that she did not receive certain records—once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that it does possess the requested records. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not attempted to present a *prima facie* case. A public agency “is responsible only for those records within its own custody or control.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980)). As to the Appellant’s second concern—that the records she did receive did not contain the specific information she expected—as noted above, the Act does not

authorize a requester to demand public records to contain certain information. Each of the Appellant's complaints are discussed more fully below.

First, the Appellant complains that she did not receive certain employment records for food service workers and a dietitian employed by Kellwell. In its response to the request, the Judge Executive's Office explained that the Detention Center does not maintain records on employees of food service vendors. The Judge Executive's Office did not violate the Act when it did not provide records that are not within its custody or control.

Similarly, the Appellant complains that she did not receive contracts or time sheets for medical providers from March 1 through July 1, 2017. But the Judge Executive's Office explains that it does not maintain the time sheets of its medical providers. The Judge Executive's Office further explains that the contract provided to the Appellant specifies its continuance through November 1, 2017; thus, the contract provided was the one the Appellant requested.¹

Next, the Appellant asserts that she did not receive "written contracts with policies and procedures to be followed by the medical physician and responsible health authority." The Judge Executive's Office responds that a contract with Southern Health Partners and the medical sections of the Detention Center's policy and procedure manual are the responsive records for that portion of the Appellant's request. The fact that the records may not contain as much detail as the Appellant wishes does not constitute a violation of the Act.

The Appellant also alleges that she did not receive written contracts for pharmacy vendors or policies and procedures to be followed by such vendors. But the Judge Executive's Office explains that the Detention Center does not contract directly with pharmacy vendors. Rather, these services are provided through Southern Health Partners. Likewise, the Appellant complains that she did not receive contracts, policies, or procedures for vendors with regard to securing and protecting inmate health records. Again, the Judge Executive's Office explains that these services are provided through Southern Health partners, and therefore, the Detention Center does not possess these vendor records. Accordingly, the Judge Executive's Office did not violate the Act when it did not provide records not within its custody or control.

Next, the Appellant complains that she did not receive written contracts between the Judge Executive's Office and the Detention Center relating to the safety and securing of inmates. The Judge Executive's Office explained that no such "contracts" exist. Instead, the Judge Executive's Office provided the Appellant a copy

¹ The Appellant also complains that the terms of the contract are "vague." But as previously discussed, the Act does not authorize a person to demand public records contain certain content.

of the Detention Center's policy and procedure manual and certain statutes pertaining to county jails. The Appellant has not made a *prima facie* case that the requested contracts exist.

The Appellant also states that she did not "receive policies, procedures, protocols and/or agreements" in the possession of the Judge Executive's Office "relating to monitoring, auditing and investigating any allegation against" the Detention Center. As the Judge Executive's Office explained in its response, it is not responsible for such investigatory functions. Rather, such investigations are conducted by the Detention Center itself, law enforcement, or the Kentucky Department of Corrections. The Appellant has not made a *prima facie* case that the requested records exist.

Finally, the Appellant alleges that the Judge Executive's Office did not fully comply with her request for "written documents reflecting the results of policies governing steps to be taken when an inspection/survey/audit of [the Detention Center] results in a citation by the Department of Corrections, Adult Institutions, Division of Local Facilities or other government agency." The description "documents reflecting the results of policies" is somewhat unclear on its face. However, in response to other portions of the Appellant's request, the Judge Executive's Office provided her with inspections, surveys, and citations issued by the Department of Corrections between January 1 and October 1, 2017, along with corrective action plans. On appeal, the Judge Executive's Office asserts that any additional documents "reflecting the results" would be "Kellwell's records, not the County's." The Judge Executive's Office did not violate the Act when it did not provide records not within its custody or control.

In sum, the Judge Executive's Office violated the Act when it delayed access to responsive records under KRS 61.872(5) without notifying the Appellant of the earliest date on which records would be available or explaining the cause of delay. However, the Judge Executive's Office did not otherwise violate the Act.

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/James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

Ms. Dawn Crawford
Jennie Y. Haymond, Esq.
Hon. Reagan Taylor