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**22-ORD-218**

October 14, 2022

In re: Richard Goins/Transportation Cabinet

**Summary:** The Transportation Cabinet (“the Cabinet”) violated the Open Records Act (“the Act”) when it failed to respond to requests for public records. The Cabinet also violated the Act when it attempted to require the use of a particular form in submitting an open records request.

***Open Records Decision***

On August 18, 2022, Richard Goins (“Appellant”), DOT Compliance Manager for Missouri Farmers Association, Inc. (“MFA”), made an e-mail inquiry to the Cabinet’s Division of Motor Carriers regarding the detainment of one of MFA’s trucks at a weigh station. The Appellant asserted that during that incident the inspector had added a note to the inspection form regarding MFA, which stated “(Verified with Kentucky Motor Carriers) (This is a Chameleon Carrier).”<sup>1</sup> The Appellant stated that he was “formally requesting copies of the documentation that the enforcement official saw that in turn made that officer print that on [MFA’s] inspection.” Although the Cabinet replied to the e-mail, it did not address the Appellant’s request for records.

During further e-mail discussion with the Cabinet on the same date, the Appellant stated that it was “necessary for [him] to have access to the document that the enforcement officer viewed at the time of the inspection which provoked this Citation description” of MFA as a chameleon carrier. Again, the Cabinet responded but did not address the Appellant’s request for records.

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<sup>1</sup> A “chameleon carrier” may be described as an “ephemeral motor carrier created by a central controlling company to escape the repercussions of repeated safety and regulatory violations.” *Great West Casualty Co. v. Maric Transportation, Inc.*, 2022 WL 4290684 n.1 (N.D. Ohio Sept. 16, 2022).

On August 23, 2022, the Appellant informed the Cabinet by e-mail that he was “still required to follow up with whatever procedure must be conducted to obtain a copy of [MFA’s] file as it was at the time of the stop” in order to “be able to explain to [his] superiors at MFA what the printed statement on the inspection means and [he could] not do so without reviewing these documents.” Again, the Cabinet did not respond to his request.

On September 13, 2022, after speaking with the Cabinet by telephone, the Appellant reiterated his “request for all records concerning enforcement and status as seen by enforcement officials regarding MFA.” Expressly invoking the Act, he stated that he was “asking [the] office for these records.” On September 15, 2022, the Cabinet acknowledged that the Appellant had “mentioned going through Open Records to get the documentation” and stated that a “request through them [*i.e.*, the Cabinet’s records custodian] is required.” The Cabinet gave the Appellant a link to a request form, which it described as “the form needed to request the information,” and stated that the completed form should be e-mailed to a certain e-mail address. This appeal followed.

Under the Act, a public agency must issue a written response to a request for public records within five business days of receiving the request. KRS 61.880(1). Furthermore, under KRS 61.872(4), “[i]f 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.” Here, the Appellant made four separate requests to the Cabinet for records, the first three of which went unanswered. Thus, the Cabinet violated the Act when it failed to respond to the Appellant’s requests submitted on August 18 and 23, 2022.

When the Cabinet responded to the Appellant’s request submitted on September 13, 2022, it properly directed the Appellant to the e-mail address for its custodian of records. However, the Cabinet stated that a particular form was “needed” to request records. Under KRS 61.872(2)(c), “[a] public agency shall not require the use of any particular form for the submission of an open records request, but shall accept for any request the standardized form developed under KRS 61.876(4).” Therefore, the Cabinet violated the Act when it attempted to require the use of a particular form for an open records request.<sup>2</sup>

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

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<sup>2</sup> On appeal, the Cabinet notes that the Appellant has not submitted a subsequent request to its custodian of records. However, the Cabinet states that after receipt of this appeal it provided the Appellant with the only record in its possession that refers to the status of MFA as a chameleon carrier.

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:

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