



COMMONWEALTH OF KENTUCKY
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22-ORD-245

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In re: Kurt Wallace/University of Louisville

Summary: The University of Louisville (“the University”) violated the Open Records Act (“the Act”) when it attempted to require the use of a particular form for submitting an open records request. The University also violated the Act when it asked the Appellant to provide additional “proof” of residency after he stated he owned property in Kentucky.

Open Records Decision

On September 6, 2022, Kurt Wallace (“Appellant”) e-mailed the University and requested a variety of records related to Covid-19 at the University Hospital.¹ The Appellant did not provide his address. On September 15, the University requested that the Appellant resubmit his request using a specific form. That same day, the Appellant responded and stated he was a “property owner in Kentucky,” provided a post office box number in Louisville, and requested additional records from the University.² On September 20, the University again asked the Appellant to complete a specific form and to specify how he qualifies as a resident of the Commonwealth under KRS 61.870(10). The Appellant again declined to use the form. On September 23, the University asked the Appellant to provide a “physical address that qualifies rather than a PO box.” This appeal followed.

¹ The Appellant requested evidence of the University’s “track record on fully informed consent,” “the number of Covid patients who died” at its hospital, its funding sources, and whether it employs any members “of the CCP 1000 talents program.”

² The additional request was for the number of background checks done on University staff, the types of medicine given to patients, the oaths of office for University officials, and the University’s various insurance policies.

On appeal, the Appellant claims the University violated the Act by requiring him to use a specific form and by requiring him to provide evidence in support of his statement that he qualified as a resident of the Commonwealth.³

When the University responded to the Appellant's request on September 15 and 20, it asked the Appellant to "fill out this form" to "comply with recent updates to Kentucky's open records law." But 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 University violated the Act when it attempted to require the use of a particular form for an open records request. *See, e.g., 22-ORD-167* (finding an agency could not require requesters to use a specific online form to submit requests electronically).⁴

The University also violated the Act when it required the Appellant to provide proof that he qualifies as a resident of the Commonwealth. "All 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).

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). 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. *See, e.g., 22-ORD-120* (requester providing a P.O. Box number and stating he was "employed" in Kentucky was sufficient to demonstrate he qualified as a resident of the Commonwealth).

KRS 61.872(2)(a) authorized the University to ask the Appellant to provide "a statement" that demonstrates he qualifies as a resident of the Commonwealth. The University, however, refused to accept the Appellant's statement that he owns

³ The Appellant also claims that the University is violating various provisions of the Kentucky Constitution and federal law. However, the Office is unable to adjudicate the Appellant's claims of constitutional and federal law violations in an open records appeal conducted under KRS 61.880(2).

⁴ The University states that it only asked the Appellant to use its form so that he would provide an address it deemed satisfactory. However, the University's reason for requiring the use of a specific form is irrelevant. KRS 61.872(2)(c) unambiguously states that an agency "shall not require the use of any particular form for the submission of an open records request."

property in Kentucky. Although his statement does not “prove” the Appellant’s residential status, KRS 61.872(2)(a) does not require actual proof of residency. Therefore, the University violated the Act when it demanded additional proof of the Appellant’s residency beyond his statement that he owns property in Kentucky.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
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Distributed to:

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