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**23-ORD-014**

January 26, 2023

In re: David Pennington/Strategic Security Corporation

**Summary:** This Office cannot find that the Strategic Security Corporation (the “Corporation”) violated the Open Records Act (“the Act”) because it is not a public agency within the meaning of KRS 61.870(1) and therefore is not subject to the Act.

***Open Records Decision***

David Pennington (“Appellant”) submitted a request to the Corporation for seven categories of records related to a specific contract it entered with the Federal Emergency Management Agency (“FEMA”). The Corporation responded and denied his request because it is “not a public agency and [is] not required to provide this information.” This appeal followed.

Residents of Kentucky are permitted to inspect “public records” of “public agencies.” See KRS 61.870; KRS 61.872. “Public records” means “all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a *public agency*.” KRS 61.870(2) (emphasis added). For the Act to apply to the Corporation, it must come within the definition of “public agency” under KRS 61.870(1). A private entity is considered a “public agency” if it “derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from *state or local* authority funds.” KRS 61.870(1)(h) (emphasis added).

On appeal, the Corporation explains it “is a privately held for[-]profit S-Corp” and it “do[es] not receive funding by any government agency other than payment for services provided.” The Corporation further explains it “receives no payment or funding from the State of Kentucky.” With regard to the contract that is the subject of this appeal, the Corporation claims the “payment for the work in question is through the federal government through FEMA to provide Armed Security Guards to locations in [Kentucky] that were impacted by flooding.”

The Appellant, however, claims the Corporation “is majority funded by tax dollars” and the specific FEMA contract related to his request makes it subject to the Act. The Appellant also states he possesses an email from FEMA that proves the Corporation is “the company holding this tax dollar funded Contract.”<sup>1</sup> However, even if the Corporation receives money from FEMA, that alone does not make it a “public agency” under the Act. FEMA is a federal agency, and it is allegedly providing the Company with federal funds. The Appellant presents no evidence the Corporation is funded by any “state or local authority funds.” KRS 61.870(1)(h). Accordingly, the record on appeal does not contain sufficient evidence to conclude that the Corporation is a public agency, as that term is defined by KRS 61.870(1)(h). It therefore was not required to comply with the Appellant’s request.<sup>2</sup>

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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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<sup>1</sup> The record on appeal does not contain the specific email from FEMA the Appellant references. Rather, the Appellant provides an email he sent to FEMA regarding the specific contract awarded to the Corporation.

<sup>2</sup> The Appellant suggests in the alternative that the Corporation is subject to the federal Freedom of Information Act (“FOIA”). However, the Kentucky Attorney General does not have the authority to enforce FOIA or decide whether the Company is subject to that law.

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Distributed to:

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