



COMMONWEALTH OF KENTUCKY
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23-ORD-068

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In re: Melanie Barker/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) because it was not obligated to create a record or to fulfill a request for information.

Open Records Decision

Melanie Barker (“Appellant”) emailed the Cabinet and asked it to provide “the document that tells exactly how much (Dollar Amount) the ARPA^[1] has paid out in Sustainability Payments to Qualified Child Care Centers to date.” In a timely response, the Cabinet provided the Appellant a copy of a document detailing the disbursement plan for ARPA stabilization grants, which explained that payments would be made quarterly from October 2021 through October 2023 with \$49.6 million reserved for each grant period. This appeal followed.

The Appellant claims the document the Cabinet provided is not responsive to her request because she “want[s] the total dollar amount that has been paid thus far.” In response, the Cabinet asserts the document reflects the disbursement procedure currently in effect. The Cabinet further states it would have to “create a document” to provide the total amount of disbursements to date.

The Act does not require public agencies to answer interrogatories or provide information in whatever form a requester demands. Rather, residents of the Commonwealth may only inspect identifiable “public records.” KRS 61.872; *see also Dep’t of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”). Here, the Cabinet provided a public record from which the

¹ American Rescue Plan Act, Pub. L. No. 117-2, 135 Stat. 4 (2021).

requested information could be calculated. The Cabinet is not required to create a new document that does not already exist to answer the Appellant's interrogatory. *See, e.g.*, 21-ORD-046. Accordingly, the Cabinet did not violate the Act.

A party aggrieved by this decision may appeal it by initiating an 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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

Ms. Melanie Barker
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