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23-ORD-129

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In re: Morgan Adams/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (the “Cabinet”) violated the Open Records Act (“the Act”) when it denied a request without adequately explaining how the exception on which it relied applied to the records it withheld. However, because the issues presented in this appeal are currently before the McCracken County Circuit Court, Family Division, this Office declines to render a decision on the merits of the appeal.

Open Records Decision

On April 13, 2023, Morgan Adams (“Appellant”) submitted a request to the Cabinet for all records pertaining to her and her children, including various documents she specifically describes. On April 26, 2023, the Cabinet denied the Appellant’s request because she “is not entitled to the records based on KRS 209.140.”¹ This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). If the agency chooses to deny the request, it “shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.* In an open

¹ Under the Act, only a “resident of the Commonwealth” has the right to inspect public records. KRS 61.872. Here, the Appellant lists a Tennessee address and it is unclear if she is a “resident of the Commonwealth” as defined by KRS 61.870(10). However, the Cabinet does not contest the Appellant’s residency.

records appeal, “[t]he burden of proof in sustaining the action shall rest with the agency.” KRS 61.880(2)(c). Although KRS 61.880(1) requires the explanation in support of denial to be “brief,” the response cannot be “limited and perfunctory.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). In *Edmondson*, the agency’s response to a request stated only that “the information you seek is exempt under KRS 61.878(1)(a)(k)(l) [sic].” *Id.* The agency failed to explain how any of the three exemptions applied to the records it withheld, and for that reason, the court held it had violated KRS 61.880(1). *Id.*

KRS 209.140 makes confidential “[a]ll information obtained by the department staff or its delegated representative, as a result of an investigation made” involving adult abuse under KRS Chapter 209. However, under KRS 209.140(1), “[p]ersons suspected of abuse or neglect or exploitation” may have access to the information, “provided that in such cases names of informants may be withheld, unless ordered by the court.” KRS 209.140 is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.”

Here, the Cabinet’s written response denying the Appellant’s request merely stated she “is not entitled to the records based on KRS 209.140.” The Cabinet’s limited response did not explain how KRS 209.140 applies to the records it withheld. Without any further explanation from the Cabinet, it is unclear how KRS 209.140 would apply given the fact that the records relate to the Appellant and her children, not records pertaining to alleged abuse of adults. Therefore, the Cabinet violated the Act when it denied the Appellant’s request for records without adequately explaining how the exception on which it relied applied to the records it withheld. KRS 61.880(1).²

On appeal, the Cabinet states it “erroneously relied on KRS 209.140 rather than KRS 620.050” as the exception authorizing it to withhold the records.³ The Cabinet further states that the McCracken County Circuit Court, Family Division

² It is not clear from this record when the Cabinet received the Appellant’s request, but its response is dated 13 days from the date of the request. Under the Act, an agency must respond within five business days of receiving a request to inspect records. KRS 61.880(1). However, the Appellant did not challenge the timeliness of the Cabinet’s response.

³ Although the Cabinet does not specify on which part of KRS 620.050 it relies, KRS 620.050(5) exempts from inspection information similar to that exempted by KRS 209.140, but rather than adult abuse it applies to an investigation of child abuse. Specifically, KRS 620.050(5) permits disclosure of information in several scenarios. For example, KRS 620(5)(a) permits the person suspected of committing child abuse to inspect the report of abuse made against her. Moreover, KRS 620.050(5)(i) permits inspection of such reports by “[t]hose persons so authorized by court order.”

“already addressed [the Appellant’s] request for records” and, as part of that dispute, the Cabinet has “provided the records to her attorney.” Finally, the Cabinet argues it cannot provide the records directly to the Appellant because that “would give her unrestricted access to the records and directly contravene the Court’s Order.” As proof, the Cabinet provides a copy of the order, which states in relevant part:

There are warranted concerns about [the Appellant] having unrestricted access to these records, as they are confidential and she has repeatedly violated the Court’s orders and the Cabinet’s attempts at securing confidentiality. The Court accommodates her desire/right to review these records and the Court’s obligation to protect the children’s confidentiality. [The Appellant] shall be allowed to review the records in the Courtroom, which will be recorded and monitored, on April 26, 2023 from 8:30 a.m. until 4:30 p.m. She *shall not be allowed to access any recording devices, including her cellphone, while reviewing the records* (emphasis added).

The Office has previously declined to render a decision on the merits where the issues presented on appeal are also currently before a court of competent jurisdiction. *See, e.g.,* 17-ORD-096. Here, it is clear the question of whether the Appellant may inspect these records has been presented to a court of competent jurisdiction, and the court has held that her access to such records must be restricted. Indeed, the court expressly prohibited the Appellant from using recording devices while she inspected the records, clearly indicating she may not possess copies of them. The court’s stated basis for its ruling is, in part, the Appellant’s repeated violations of its previous orders. This Office will not assist her in attempting to again violate the court’s orders. Accordingly, because the Appellant’s right to inspect these records has already been decided by a court of competent jurisdiction, the Office declines to adjudicate the merits of the Appellant’s appeal.

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
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s/ Matthew Ray
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Distributed to:

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