



COMMONWEALTH OF KENTUCKY
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23-ORD-133

June 13, 2023

In re: Carlos Harris/Wellpath, LLC

Summary: In the absence of evidence that Wellpath, LLC (“Wellpath”) receives at least 25% of its funds expended in Kentucky from state or local authority funds, Wellpath is not a public agency under the Open Records Act (“the Act”).

Open Records Decision

On May 1, 2023, inmate Carlos Harris (“Appellant”) submitted a request to Wellpath for five categories of records.¹ Having received no response from the Medical Center, the Appellant initiated this appeal on May 15, 2023.

On appeal, Wellpath states it is not subject to the Act because it is a private entity.² 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). A private entity, such as Wellpath, is not a “public agency” under the Act unless it is a “body which, within any fiscal year, 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). Moreover, “any

¹ The Appellant sought: (1) the name and address of a Wellpath employee; (2) the “Wellpath standards for removal of Tumors”; (3) the results of biopsies taken at a medical facility on March 29, 2023; (4) the “Wellpath standards for treatment of Gastritis and LA B Grade reflux esophagitis”; and (5) “any/all information/documents about ‘Cost Containment Plan.’”

² Nevertheless, Wellpath states that no records responsive to requests two, four, or five exist. It declines to provide the Appellant with records responsive to request one because those records do not specifically reference him. *See* KRS 197.025(2). Finally, Wellpath states the Appellant can obtain records responsive to request three by submitting a request to the facility where the Appellant is incarcerated.

funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection.” *Id.*

Here, the Appellant neither claims, nor provides any evidence to support a claim, that Wellpath derives 25% of its funds expended in Kentucky from state or local authority funds. In contrast, Wellpath directly states it “does not derive 25% of its funds expended in the Commonwealth of Kentucky from state or local authority funds.” As a result, this Office cannot find that Wellpath is a public agency under KRS 61.870(1), or that it is subject to the Act.

A party aggrieved by this decision may appeal it by initiating an 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 emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Carlos Harris #143261
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