



COMMONWEALTH OF KENTUCKY
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23-ORD-160

July 5, 2023

In re: Stephen D. Gruner/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 failed to issue a response granting or denying a request and when it required a request be re-submitted by email that was mailed to its listed mailing address for such requests. However, the Cabinet did not violate the Act when it required the use of a CHFS-305 form to obtain copies of records that are confidential under KRS 209.140 and exempted from inspection under KRS 61.878(1)(l).

Open Records Decision

Stephen D. Gruner (“Appellant”) submitted a request to the Cabinet for records related to the alleged assault of his mother by an employee of her long-term adult care facility located in Louisville.¹ The Cabinet mailed an undated response advising the Appellant it “has gone paperless.” Rather than responding to the substance of the Appellant’s request, the Cabinet invited the Appellant to re-submit his request “via email” with copies of his “ID” and the CHFS-305 form it provided. This appeal followed.

On appeal, the Appellant claims his request was denied because he did not send it by email. However, the Cabinet asserts it did not deny the Appellant’s request. Rather, the Cabinet claims it simply asked him to re-submit his request via email

¹ According to the Appellant, these allegations were substantiated by the Cabinet, who then closed its case before handing it off to the Louisville Metro Police Department. The Jefferson County Commonwealth Attorney’s Office declined to prosecute the case.

with “his photo identification” and a completed CHFS-305 form. According to the Cabinet, 922 KAR 1:510 requires the submission of a completed CHFS-305 form to obtain the requested records because they are confidential under KRS 209.140 and KRS 61.878(1)(l), and therefore, can only be released to certain individuals.

When an agency receives a request under the Act, it must determine within five business days whether to grant or deny it and notify the requester of its decision. KRS 61.880(1). If the agency denies any portion of the request, it must also cite the exemption authorizing the denial and explain how it applies to records withheld. *Id.* Here, the Cabinet received the Appellant’s request, but its response did not notify him whether it was granting or denying it. Rather, the Cabinet’s initial response merely stated it “has gone paperless” and invited the Appellant to re-submit his request “via email” with copies of his “ID” and the additional form it provided. Thus, the Cabinet’s initial response violated the Act when it neither granted nor denied the Appellant’s request.²

However, the Cabinet did not violate the Act when it required the Appellant to complete a CHFS-305 form to obtain copies of confidential records. The CHFS-305 form is not a form for the submission of requests to inspect records. Rather, it is a release to be completed by a person whose confidential information is contained within records that have been requested. The Cabinet has promulgated the use of the form through administrative regulation. *See* 922 KAR 1:510. The necessity of the form is derived from KRS 209.140, which 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 209.³ Notwithstanding the broad confidentiality provisions of KRS 209.140, certain individuals may still have access to the records. Relevant here, KRS 209.140(5) permits inspection by the “alleged abused or neglected or exploited person.” The Appellant is not the “alleged abused or neglected or exploited person,” but rather, he possesses a power of attorney for his mother, the alleged abused person. Because his mother would be permitted to inspect the records under KRS 209.140(5), the Appellant possesses the same right of inspection as her attorney-in-fact. The purpose

² On appeal, the Cabinet reiterates it did not deny the request because it was not sent by email and says it will accept the Appellant’s request if he submits it, along with the required identification verification documentation, via mail or email. To the extent the Appellant claims the Cabinet violated the Act by requiring him to email a request instead of mailing it, that issue is now moot. *See* 40 KAR 1:030 § 6.

³ 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.”

of the CHFS-305 form and its instructions for providing proof of identity is to allow the Cabinet to confirm that the Appellant does indeed possess a power of attorney for his mother, and by acting as her attorney-in-fact, he is authorizing the Cabinet to release the records under KRS 209.140(5). As such, the Cabinet did not require the use of a particular form to exercise the right of inspection, which KRS 61.872(2)(c) prohibits. Rather, it required the use of a particular form to verify the Appellant was eligible to receive the records under KRS 209.140. Accordingly, the Cabinet did not violate the Act by requiring the Appellant to use the CHFS-350 form.

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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