



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

23-ORD-170

July 11, 2023

In re: Charles Sullivan/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

Inmate Charles Sullivan (“Appellant”) submitted a request to Wellpath seeking his medical records related to five specified dates. Wellpath denied the request, stating that it is a private company not subject to the Act and that it does not possess the requested records. This appeal followed.¹

On appeal, Wellpath maintains 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

¹ The Appellant submitted his request to Wellpath via a “Request to View/Obtain Health Information” form. In the space provided for a description of the records requested, he stated, “See attachment,” which presumably detailed the specific health information he sought. Although the Appellant provided the Office with the request form, he did not include the referenced attachment. Therefore, it is arguable whether the Appellant complied with KRS 61.880(2)(a), which requires a person to submit “a copy of the written request and a copy of the written response denying inspection.” The Appellant here has provided an incomplete copy of his request, because the missing attachment presumably described the records he sought. Regardless, because Wellpath is not a public agency subject to the Act, the Office need not decide whether the Appellant fully complied with KRS 61.880(2)(a).

² Wellpath also states that the Appellant can obtain records responsive to his request by submitting a request to the facility where the Appellant is incarcerated.

explain why. KRS 61.880(1). A private entity, such as Wellpath, is not a “public agency” under the Act unless, “within any fiscal year, [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). Moreover, “any 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 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

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

#259

Distributed to:

Charles Hank Sullivan #202269

Karen Vesty

Jonathan Mosley