



COMMONWEALTH OF KENTUCKY
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23-ORD-254

September 19, 2023

In re: Michael Howard/Kentucky Department of Corrections

Summary: The Kentucky Department of Corrections (the “Department”) did not violate the Open Records Act (“the Act”) when it did not provide the Appellant with a free copy of his medical records.

Open Records Decision

Inmate Michael Howard (“Appellant”) submitted a request to the Department for his “one free medical records copy” under KRS 422.317. The Department denied the request because “[t]he Department of Corrections shall not be considered as a health care provider under” KRS 422.317. This appeal followed.

On appeal, the Appellant claims his request was directed to Wellpath, LLC (“Wellpath”) rather than the Department. However, the Appellant submitted his request using the Department’s medical records request form and used the process outlined in CPP 6.1¹ for requesting medical records from Department institutions. Further, the Appellant’s request does not mention Wellpath. Accordingly, the Department correctly concluded the Appellant’s request was directed toward it rather than Wellpath.²

¹ See Corrections Policy and Procedure (“CPP”) 6.1, available at <https://corrections.ky.gov/About/cpp/Documents/06/ CPP%206.1%20Open%20Records%20-%20Effective%207-20-2021.pdf> (last accessed September 19, 2023).

² Even if the Appellant has submitted a request for his medical records to Wellpath, the Office has previously held that Wellpath is not a public agency subject to the Act. See, e.g., 23-ORD-170; 23-ORD-133.

Moreover, the Act does not require the Department to provide the Appellant a free copy of his medical file.³ Rather, under KRS 61.874(1), a public agency “may require . . . advance payment of the prescribed fee” for copies of public records. Thus, an inmate is entitled to receive a copy of a public record only after “complying with the reasonable charge of reproduction.” *Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985). It is “entirely proper for [a correctional] facility to require prepayment, and to enforce its standard policy relative to assessment of charges to inmate accounts.” 95-ORD-105. Accordingly, the Department did not violate the Act when it did not provide the Appellant with a free copy of his medical records.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
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#370

Distributed to:

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³ KRS 422.317(1) requires a licensed hospital or healthcare provider to provide a patient, upon written request, one free copy of his or her medical record. However, KRS 422.317(2) excludes the Department of Corrections from the definition of “health care provider.” Regardless, under KRS 61.880(2)(a), the Office may only determine whether an agency complied with the provisions of the Act. Because KRS 422.317 is not part of the Act, the Office lacks jurisdiction to determine whether an agency has complied with it.