



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-280

October 23, 2023

In re: James Harrison/Delbert Mays Towing, LLC

Summary: The Office is unable to find that Delbert Mays Towing, LLC (“the Company”) violated the Open Records Act (“the Act”) because the Office cannot find that it is a public agency subject to the Act.

Open Records Decision

Inmate James Harrison (“Appellant”) claims that, on September 7, 2023, he submitted a request for records to the Company regarding a vehicle he identified by VIN number. On September 21, 2023, having received no response to his request, the Appellant initiated this appeal.¹

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). Although a “public agency” carries the burden of proof under KRS 61.880(2)(c), that is only if the entity is a “public agency” as defined under KRS 61.870(1). Clearly, the Company is a private entity. Under KRS 61.870(1)(h), a private entity, such as the Company, will not be considered a “public agency” or subject to the Act’s requirements 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.” When a requester claims that a private entity is a public agency subject to the Act, the burden is on the requester to make a *prima facie* case that the entity meets the requirements of KRS 61.870(1)(h). *See, e.g., 23-ORD-070.* A requester’s mere assertion that an entity is a public agency is insufficient to make a *prima facie* case. *See, e.g., 23-ORD-174.*

¹ The Office provided the Company with a copy of the notice of appeal, but it did not respond to that notice.

Here, to make a *prima facie* case that the Company is a public agency and is subject to the Act, the Appellant asserts that the Company “operates as agents of the state” because it conducts “seizures and confiscation of vehicles and contents” for the Beattyville Police Department and the Lee County Sheriff’s Department. The Appellant also asserts that he “is unsure of the legality in [*sic*] the agreement” between the Company and those public agencies. Regardless, the Appellant does not provide any “agreement” between the Company and those public agencies to support his bare assertion that the Company “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). As a result, the Office cannot find that the Company is a “public agency” as defined by the Act or that it was required to respond to the Appellant’s request.

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

#423

Distributed to:

James Harrison #095435
Delbert Mays