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24-ORD-021

January 25, 2024

In re: Lawrence Trageser/Okolona Fire Protection District

Summary: The Okolona Fire Protection District (“the District”) did not violate the Open Records Act (“the Act”) when it denied requests for public records because the requester did not state whether the requests were for a commercial purpose.

Open Records Decision

On December 11, 2023, Lawrence Trageser (“Appellant”) submitted two separate requests to the District for copies of public records. On the face of each request the Appellant included his residential address in Taylorsville, Kentucky. In a timely response, the District denied the requests because they “fail[ed] to include a statement whether the requests are for a commercial purpose pursuant to KRS 61.874(4) & (5)” and “fail[ed] to include a statement that the person making the request is a resident of the Commonwealth under KRS 61.872(2) and KRS 61.870(10) and [the] manner in which the requester is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).”

The Appellant resubmitted both of his requests on December 19, 2023, adding a statement that the requests were “made by Lawrence Trageser, an individual,” and “made by Lawrence Trageser, resident of Kentucky.” He further noted that each of the requests “provided an accurate and legitimate Kentucky address that could easily be verified to include the property owner Lawrence Trageser.” In a timely response, the District again denied both requests because they did not include a statement as to whether the Appellant was requesting records for a commercial purpose. This appeal followed.

Under KRS 61.872(2)(a), when a person makes a request to inspect public records, “[t]he official custodian may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).” Here, the Appellant’s original

requests contained his residential address in Taylorsville, Kentucky. This was sufficient to establish that the Appellant qualifies as “[a]n individual residing in the Commonwealth” under KRS 61.870(10)(a). *See* 22-ORD-120 (finding a post office box address in Kentucky sufficient to constitute a “statement” demonstrating residential status). Therefore, the Appellant’s requests did not fail to state the manner in which he qualified as a resident of the Commonwealth.¹

However, neither the Appellant’s original requests nor his resubmitted requests contained a statement regarding whether his purpose for obtaining records was commercial or noncommercial. Under KRS 61.874(4), if public records are requested for a commercial purpose, the public agency may impose certain requirements including a reasonable fee, a certified statement of the purpose for which the records will be used, and the establishment of a contract. For this reason, KRS 61.876(4)(c) permits the public agency to inquire “[w]hether the request is for a commercial purpose.” Because the Appellant’s initial requests did not indicate the purpose for which he requested the records, the District did not violate the Act by requiring him to state whether he submitted his requests for a commercial purpose. In his resubmitted requests, the Appellant attempted to address the matter by describing himself as “an individual.” This did not answer the question, however, because individuals are capable of requesting records for either commercial or noncommercial purposes. Therefore, the District did not violate the Act when it denied the Appellant’s resubmitted requests for failure to state whether the requests were made for a commercial purpose.²

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.

¹ The parties make extensive arguments concerning whether the Appellant is a resident of the Commonwealth by virtue of being a “news-gathering organization” within the meaning of KRS 61.870(10)(g). However, it is unnecessary to address these arguments because the Appellant is clearly a resident of the Commonwealth under KRS 61.870(10)(a).

² While this appeal was pending, the District issued a substantive response to the Appellant’s requests and provided to the Appellant a copy of what it described as “all nonexempt records.” That final disposition is not at issue in the present appeal.

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/s/ James M. Herrick
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Distribution:

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